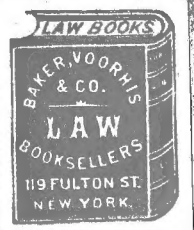


# TRADE UNIONISM AND LABOR PROBLEMS

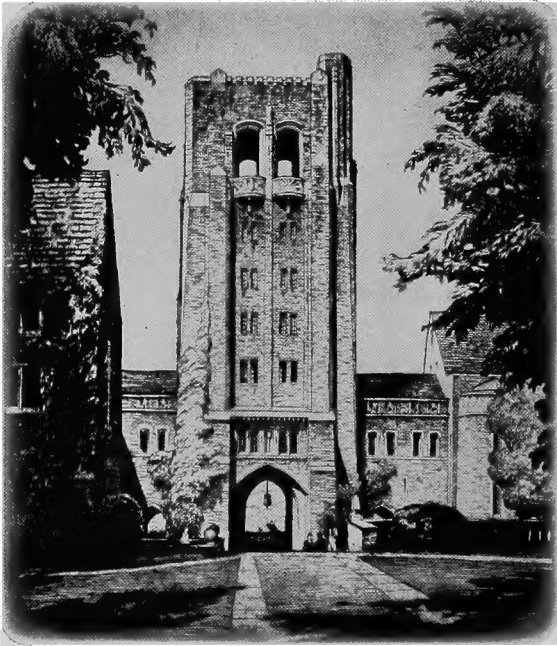
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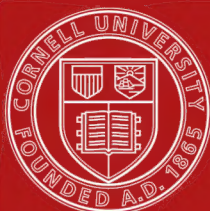
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EDITED BY

WILLIAM Z. RIPLEY, PH.D.

PROFESSOR OF ECONOMICS, HARVARD UNIVERSITY

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# TRADE UNIONISM AND LABOR PROBLEMS

*SECOND SERIES*

EDITED

WITH AN INTRODUCTION

BY

JOHN R. <sup>oyers</sup>COMMONS

PROFESSOR OF ECONOMICS, UNIVERSITY OF WISCONSIN



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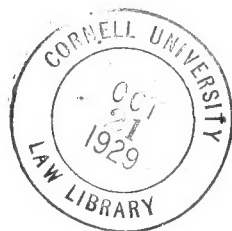
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## PREFACE

This book is a new edition, not a revised edition, of "Trade Unionism and Labor Problems," published in 1905. As before, the book is planned for use not only as a collection of reprints but also as a textbook. It provides raw material, theory, and discussion. It draws upon men of affairs and students. It is intended to give concrete cases and generalizations. The Introduction and Index are intended to bring together from all these cases the items on which generalizations may be made.

I have again had the valued help of Professor Ripley, editor of the series. The liberality of the several authors, editors, and publishers in permitting this reproduction of their work is sincerely acknowledged, as well as the help of assistants in the Department of Economics of the University of Wisconsin—Mr. Olin Ingraham, Mr. O. F. Carpenter, and Miss Miriam Gaylord—who have made wide searches for me.

JOHN R. COMMONS

UNIVERSITY OF WISCONSIN



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## INTRODUCTION

• Fifteen years ago Insurance and Unemployment were placed last, now they are placed first, in this book. Western civilization is built upon security of investments, and it is the insecurity of labor that menaces it (Chapter I). One great nation has attempted to abolish the system and to substitute government by organized labor. It was only in 1911 that American states began seriously to safeguard the security of workers through accident compensation laws,<sup>1</sup> but the large amount of work yet remaining to be done in this very limited field is shown by Professor Fisher in his chapter on the subject (Chapter II). The extent to which England has gone in health insurance and unemployment insurance is shown by Miss Halsey (Chapters III and IV); while Mr. Lynch, former Chief of the International Typographical Union, shows how recent and imperfect as yet are the efforts of trade-unions in provisions against sickness (Chapter V). The relation of insurance to sickness prevention is shown in Chapter VI.

The instability of employment has its personal and economic causes. How shall they be distinguished? And, whether they are or are not distinguished, what is the social significance? Out of fifty or more interviews with wandering laborers had by Mr. Speek in 1914 I have selected two (Chapter VII). When you have read two or three the others furnish very little that is new. A corroborative view is given from a municipal lodging house (Chapter VIII); and the migration of the negroes to the North and West adds its evidence of insecurity (Chapter IX). How these workers come and go at the employment offices, and the need of a correct national system of offices, is shown by Mr. Lescohier from his experience in conducting a federal-state office (Chapter X).

<sup>1</sup> Commons and Andrews, *Principles of Labor Legislation*, p. 397. New York, 1920.

Management without democracy is the very despotism that provokes revolution, and the problem of industry is truly the problem of management. Scientific management, applied to labor, passes through two stages: the older engineering stage, that dealt with individuals, and the newer personnel stage, that deals with committees and unions. The main points of the older scientific management, as it affects labor, are presented in extracts from Mr. Taylor's address to the labor organizations of Milwaukee, and the attitude of trade-unions is shown in the reply of Mr. Alifas, representing the Metal Trades Union affiliated with the American Federation of Labor (Chapter XI). Mr. Taylor's great contributions to scientific management were begun more than twenty years ago. Scarcely five years ago did employers begin generally to install labor departments or personnel departments in their factories. The deciding cause was the labor turnover (Chapter XII), with its newly discovered enormous expense to the employer. The discovery of the labor turnover begins the employer's scientific study of the laborer as a man, where the older "scientific management" had begun to study him only as a producer.<sup>1</sup> A notable instance is given by Mr. Feiss showing the transition from the old scientific management to the new labor management (Chapter XIII).

There is no automatic solution, no panacea for labor problems, and democracy without management reverts to despotism on the mere ground of its inefficiency. After the Soviets had taken possession of the Russian factories and the Bolshevik party had won over the Soviets, the confiscation of the factories without compensation, the expulsion of the managers, and the resulting breakdown of credit and discipline compelled Lenin to resort to despotism in the name of labor, to the prohibition of strikes enforced by dictatorship of the army, to proposals of "scientific management" which he had previously condemned, and to offers of high salaries to managers if they would return. The fundamental wrong was confiscation, on a false theory that labor alone creates wealth, whereas credit and good faith are equally important in the process of production (Chapter XIV).

In Chapter XV Mr. McCabe has analyzed with remarkable insight the principal methods of bonus and premium payment. The older scientific management, as applied to labor, achieved its success in

<sup>1</sup> Commons, *Industrial Goodwill*. New York, 1919.



the scientific study of work and compensation for work, but placed too much reliance upon science as a means of restraining greed in the conflict of capital and labor. Mr. Mixer's knowledge and experience of scientific management enables him to point out the crux of the matter and leads him to propose a rather drastic remedy (Chapter XVI). Mr. Wolf has made notable discoveries in scientific methods of securing the initiative of workers in production, which he describes (Chapter XVII), while Mr. Alexander describes the apprenticeship system of the General Electric Company, which had its inception at their West Lynn Works and which has become the model for many other companies (Chapter XVIII). Mr. Emmet made a prolonged investigation of profit-sharing systems, visiting all of the establishments whose systems he describes (Chapter XIX), and Mr. Baker tells of the plan in the factory of which he is the head, a plan which has carried profit-sharing over almost into producer's coöperation (Chapter XX). By means of his profit-sharing and coöperative-government system, Mr. Mitten converted the Philadelphia Rapid Transit Company from imminent bankruptcy into a profitable business (Chapter XXI). Mr. Renold gives a systematic and comprehensive sketch of a shop-committee system, a system partly in operation in his works at Manchester, England, and partly expanded to meet new conditions (Chapter XXII). Mr. Douglas and Mr. Wolfe, of the Emergency Fleet Corporation, describe that gigantic governmental venture in labor management (Chapter XXIII).

The newer scientific management, which deals more or less collectively with labor, takes its new policy from trade-unionism. Chapter XXIV shows the attitude of the American Federation of Labor towards these very systems of shop committees or "employer's unions," which are presented in the preceding chapters. That trade-unionism is not a fixed or simple affair, but is as changeable and diversified as the industrial and governmental conditions which it endeavors to control or regulate, is shown by Mr. Janes (Chapter XXV). Mr. Glocker shows the tendency toward closer coöperation of unions in related trades (Chapter XXVI), and Mr. Barnett the development of a distinctive feature of American unions—the supremacy of national over local unions in a single trade (Chapter XXVII). Miss Stecker (Chapters XXVIII and XXIX) and

Mr. Wolman (Chapter XXX) show the contrasted outcome of the introduction of machinery in the relations of organized employers and trade-unions on a national scale, while Mr. Cross (Chapter XXXI) and Mr. Deibler (Chapter XXXII) show respectively the dominance of unions (San Francisco building trades) and the equilibrium of employers and employees (Chicago patternmakers) in collective bargaining. Mr. Sydenstricker shows the development of the famous Anthracite Coal Strike Arbitration of 1903, which established an open-shop agreement without recognition of the union (Chapter XXXIII), and Mr. Stewart shows certain effects in the bituminous coal-mining industry of the characteristic effort of trade-unions to equalize competitive conditions (Chapter XXXIV). Chapter XXXV gives verbatim the shop agreement of Hart Schaffner & Marx, which has recently (1919) been extended to cover the entire competitive men's clothing industry throughout the principal manufacturing centers of the United States.

The essentially conservative program of the American Federation of Labor is brought out in Chapter XXXVI and should be compared with the program of the British Labor Party readily available in the Monthly Review, United States Bureau of Labor Statistics, April, 1918.

The transition in the juristic theories of American courts from the individualistic notions of the eighteenth and nineteenth centuries to the collectivistic notions of the twentieth century appears vividly in the articles by Roscoe Pound (Chapter XXXVII) and Felix Frankfurter (Chapter XXXVIII) of the Harvard Law School, while the hesitancy of the Supreme Court in extending the innovations to labor organizations is shown by Mr. Powell, of Columbia University (Chapter XXXIX). The complete adoption of collectivistic theories of jurisprudence is seen in detail as Chief Justice Higgins, of the High Court of Australia, reviews the decisions handed down by the Australian Court of Conciliation and Arbitration (Chapter XL), while Mr. Compton analyzes the economic theories underlying this new province of law (Chapter XLI), and Mr. Taussig shows the economic limits within which it may be expected to be confined (Chapter XLII).

The most complete study yet made of minimum-wage laws in American states is given by Miss Douglas (Chapter XLIII). A

careful study, on the ground, of the operations of the Canadian effort to limit the right to strike during investigation is given by Mr. Squires (Chapter XLIV), while the editor of this book presents considerations leading to a plan for elimination by federal law of perhaps the most serious blot on American industry, the twelve-hour, seven-day system of the steel industry, which, in 1919, withstood the attack of organized labor (Chapter XLV).

These chapters are selected with a view to setting forth five principal aspects of labor problems. The first in importance is Security (Part I), beside which all other problems are relatively simple. Next is the Labor Market (Part II), wherein the problem is closely related to security. Next is Labor Management (Part III), the part played by employers; then the part played by Labor Unions (Part IV); and finally the part played by the state through legislation, administration, and judicial decision (Part V).



# TRADE UNIONISM AND LABOR PROBLEMS

## PART I. SECURITY

### I

#### INDUSTRIAL RELATIONS<sup>1</sup>

THERE is no automatic method of bringing about industrial peace; no panacea can be proposed. The socialists propose a panacea. They consider that the conflict of capital and labor springs from the historical fact of private property, and that if private property is abolished and all property made common, then there will be harmony. There will be no clashes and no conflict. They would abolish conflict and bring about industrial peace by abolishing private property, but in order to accomplish that result they must also abolish liberty. As long as there is liberty there will be strikes, for a strike is nothing more nor less than liberty to stop work and to wait for a bargain—it is a process of negotiation, it is a scheme of withholding your property until you can agree on the terms of exchange.

The principal new thing about this situation in modern industry is that it is conducted on a large scale,—much more than we have ever known before,—and that is because there is more liberty than has ever been known before. It has only been two generations that the workman, under our constitution, has been free. We have a new situation. The liberty of labor is a new phenomenon, and it should not be surprising that we have not learned to deal either with the institution of property or with the liberty of the workingman. They are both new problems.

<sup>1</sup> From an address, "Bringing about Industrial Peace," before the Conference of the National Association of Employment Managers, December 13, 1919.

It would be futile to propose any single solution of the so-called labor problem. Two things, however, may be mentioned which seem to be impossible in the direction of a solution of the task of bringing about industrial peace. It cannot be brought about by rough methods. We have gone through considerable discussion of compulsory arbitration, and there has been a considerable reliance on the injunction and on threats. These crude methods are breaking down. We may put the leaders in jail, we may prevent them from using the mails, and we may tie up their funds; but if beneath what the leaders are doing there is a real grievance, a real unrest and a mass movement, we cannot permanently suppress it. The rough method has about reached its limit. It has failed in the different countries where it has been tried, and recent events in this country seem to prove that we cannot resort to the rough method of bringing about industrial peace.

Then there is another means which has been resorted to more or less, the method of misrepresentation. Perhaps the greatest offender in the method of misrepresentation is the United States Steel Corporation. It flooded this country with propaganda of Bolshevism, as though the laboring people of the United States, who are demanding the abolition of the twelve-hour day and the seven-day week, were animated by the desire of taking possession not only of the factories of the Steel Corporation but of all factories. Apparently they succeeded in that propaganda and misrepresentation. You find throughout the country not only an unrest amongst laborers but a decided unrest amongst employers. Employers have become easy marks—anybody who has a panacea can come to an employer and lift \$100 out of his pocketbook by offering him a remedy against Bolshevism. The unrest which has been stirred up amongst employers by the Steel Corporation in its wonderful propaganda is a menace to the industrial peace of the country. Neither rough methods nor misrepresentation will permanently bring about industrial peace.

If we cannot rely upon these methods of the past, what is going to be the method and what can we offer as a remedy in bringing about industrial peace? In my judgment the method is one not of a year or two years but of many years. It is the method of prevention. We must investigate the conditions which cause this industrial unrest and we must prepare in advance to remove the conditions which cause conflict to waken up.

Last February the administration at Washington might have known what was going to happen in the coal-mining industry. The administration had all of the means of knowing how many hours' work the men were getting in the week; they had the means of knowing that after the armistice was signed employment fell off; that during the winter months and on through the summer the men were not working two thirds of the time, or even half time; that in the winter they were compelled to sell their Liberty Bonds, they were compelled to eat up their savings, and there was great suffering in many parts of the mining districts. Anyone who attended that convention of the mine-workers' union in Cleveland last summer and saw those twelve hundred mine-workers coming up out of the ground in one great solid, unanimous opinion could not for a minute conceive that their unrest was the work only of agitators and leaders. They were not officials, they were not the salaried leaders defending their jobs. They were the actual mine-workers sent there by the local unions to protest against conditions.

They made a great statistical blunder and perpetrated an economic fallacy. Their statistical blunder, owing to the lack of proper statistical information, led them to ask for an increase of 60 per cent in their wages. They figured it out accurately, according to the light which they had. Their statistician had figured that their cost of living had gone up about 104 per cent, whereas, as a matter of fact, it had gone up only 80 per cent—they had taken wholesale prices rather than retail prices. They figured their wages had gone up 44 per cent and they wanted another 60 per cent, and, added to the 44 per cent on the 1914 basis, that would have brought them up exactly even with the cost of living.

Their economic fallacy was based on the idea that by restricting the hours of labor to six they could force industry to equalize employment throughout the year. The impression was generally spread over the country that what they intended to do was to restrict the output by cutting the hours from eight to six. We all know now that what they were really trying to do was to distribute the work evenly throughout the year. A man working in a coal mine often does not know until the whistle blows in the evening whether there will be work tomorrow or not. When he goes to work in the morning he does not know whether he will have two, three, four, five, or

eight hours of work. Living in this state of uncertainty, not simply for the year but for twenty or thirty years, the mine-worker has been brought up on the conviction that each time he reduces the hours of labor he forces the employer to distribute the work more evenly. He is not asking for less work, he is asking for steady work.

The administration at Washington should have known these conditions and circumstances. They had the correct statistical information, they knew the conditions in the industry, and at the time when the administration lifted the ban on the operators' price of coal they should have negotiated with the operators to bring about an adjustment of wages so as to meet accurately the cost of living.

This fluctuation of prices, this changing cost of living, has been going on for an entire century. It is not a new phenomenon. One hundred years ago, at the close of the Napoleonic Wars, we had the same situation. We had it again in the thirties owing to wildcat banking at that time. We had it during the Civil War, and now we have it repeated. We have had in all of these periods quite the same crude explanation of the facts—the rise of prices has always been charged up to monopolies and profiteering. It has now been charged up to restrictions by the laborers. It may be true, and no doubt it is, that there is profiteering and that there is "laying down" on the job by wage-earners, but if we try to figure out how much influence either profiteering or restrictions by labor has on the elevation of prices, I think we will have to conclude that if we could stop all of the profiteering and stop all of the restrictions by labor, it would not affect the total result very materially. Profiteering and restrictions are mainly results, not causes, of rising prices. The high cost of living is something that neither the employer nor the employee can prevent. It does not come from anything under the power of capital and labor to overcome, and yet it is the one great cause of uncertainty and unrest, and has been for a whole century.

The fluctuation of currency is the greatest of all the labor problems. It throws a red brick continually into capital and labor. The first great method of importance in bringing about industrial peace is the stabilizing of the dollar. If we could have a system of currency in which the great price movements which have been occurring in all these years could be stabilized, we would do more to stabilize industry, to bring about industrial peace, than any other one thing.



In times of rising prices we have restrictions, aggressive movements ; in times of falling prices we have unemployment, bankruptcy, and depression. The whole situation is rendered unstable, and we are living continuously in a period of uncertainty.

I know of no way of reaching that question, which to me seems the most fundamental of all, except that remedy proposed by Irving Fisher, of stabilizing the dollar.<sup>1</sup> Yet we know that a remedy of this kind will not come very soon. Consequently the best that can be done is for employers and employees to adjust themselves to the situation. Capital and labor alone cannot prevent this fluctuation.

There is, apparently, only one great constructive plan in this country on a national scale which has attempted to bring about industrial peace by meeting the situation of the currency, and that is the plan which is now being worked out in the book and job printing business with the labor organizations. With the increased cost of living, the printing business did not raise wages. They had their agreements that had not expired and did not provide for raising wages. But in two or three places in the country—in New York, Chicago, and Seattle—the local unions violated their agreements and went after the increased wages by direct action. And, although the employing printers contended that they could not pay the increase, yet when they came to it they not only paid the increase but they paid more than the increased cost of living. The only places in the United States where labor actually secured, in the book and job printing business, an increase in wages corresponding to the increase in the cost of living were where the local unions defied their own national unions. What a lesson that was to labor in the United States! The only way we can keep up with the cost of living is by violating our agreements, by resorting to methods which we have promised not to adopt, by defying our own organizations.

Consequently we find that the book and job printing business has come together on a national scale and is in the process of adopting the principle that employers will not wait until demands and strikes are upon them, but will automatically change the level of wages as the changing price curve moves up or down. Every six months, or at periodic intervals, a change is proposed to be made throughout the entire United States, on the initiative of the employer—not waiting

<sup>1</sup> Fisher, *Stabilizing the Dollar*. New York, 1919.

for labor to make the demand,—thus heading off this unrest in the localities. In doing that the employing printers throughout the United States for the first time have joined with the national organizations of labor where their interests are alike, and we see on a new national scale the largest expansion of scientific management—capital and labor combining to look ahead to the future in order to prevent industrial conflict by remedying the conditions in advance.

Of course we have the objection that if an increase in wages causes prices to go up, and if an increase in prices provokes a further demand on the part of labor for wages to go up, we have that vicious circle. But that vicious circle cannot be avoided as long as we have inflation of currency. If we had a stabilized dollar, no matter what the relations are, the prices and wages would be stabilized in accordance with the general level of the price curve. It is a mistaken view that it is this pyramiding of wages and prices that keeps prices up. It is not the pyramiding of wages and prices, it is the inflation of the world's currency; and no matter what adjustment might be made between employers and laborers, a correction of the currency of the world could stabilize prices and prevent the need of this pyramiding. That is the first and most important fundamental condition to be recognized in the conflict of capital and labor, as it appears to me.

What about restrictions of output? Everybody knows that in good times working people "lay down" on the job, no matter whether organized workers or not. People do not work as hard in good times as they do in hard times. We have the curious paradox that in good times, when we ought to increase the output, labor restricts the output; and in hard times, when we don't want people to work so hard and increase the supply of production, then they work the hardest. A business man does not conduct his business in that way. In good times, when prices are going up, he tries to increase his output; in hard times, when prices are falling, he tries to restrict his output—he does not buy more than he can sell. In other words, labor works just the opposite of business. In good times, when prices are up, then is when labor "lays down" on the job and refuses to increase the output and keep up the supply. In hard times, when the demand has fallen off, then is when labor works the hardest and turns out the most production. It surely seems that

we have been going on a wrong hypothesis in dealing with labor. It works out all right in dealing with marketing and commodities, but labor seems to work just the opposite.

We have been going on the theory that in order to get efficiency, in order to get output, in order to get laborers to work, there must be some kind of a penalty held over the workingman—the penalty of unemployment, the penalty of being discharged if he does not work, if he does not do his duty, if he is not on the job. It is then that he suffers the penalty of being discharged from his job. Our method has been the rough method of disciplining labor by the penalty of unemployment.

That penalty does not work in good times; it works too much in hard times. In good times the workman is not afraid of unemployment. What's the use? If he is discharged, he can go across the street and get another job. In hard times, when we don't want so much produced, then he works hard because he is afraid of unemployment and cannot go across the street and get another job. The psychology of labor, both in good and in hard times, is fundamentally the psychology of a class of people whose life is insecure, who are subject to rough methods of discipline. We cannot understand the problem of dealing with labor unless we understand that fundamental fact of insecurity of employment. It is just as vicious in good times as it is in hard times. In good times the workingman's high wages are an injury to him; he gets too much money, and he does not know what to do with it and spends it extravagantly,—burns it up,—and when the hard times come he has nothing to fall back upon. The fluctuation of earnings—great earnings in good times, falling off in hard times—is demoralizing to the character of working people.

If we have to depend upon the rough method of discharge for getting efficiency, then we are going to keep labor continually unstable and uncertain, and the character of the workingman will not rise to the occasion of modern industry.

Modern capitalism is not based upon the ownership of physical things. We might see much of our machinery and our buildings destroyed by earthquake or war, but we all know that if we retain the credit system it will not be very long until all of our machinery and buildings are restored. We usually consider that the production

of wealth is brought about by the union of capital, management, and labor. Capital is the physical machinery and the tools ; management is the organizing element ; labor produces the physical product. The three must, indeed, be combined, but the greatest instrument of production—the thing that really produces modern wealth—is not physical things, is not labor, is not management ; it is confidence in the future, it is a credit system based on the expectation of industrial continuity—an expectation that debts will be paid.. The capitalistic system is security of expectations. If we could not offer security to the investor, we might still have production of wealth. Physical things, management, and labor might go on producing wealth, but you know how much wealth could be produced if it were not for our credit system. The production of wealth would fall back to what it was in colonial times ; nobody could ship his product to anybody else, and we would not trust one another. Capital is based upon security of expectations. The investor has confidence that his investment will be returned to him, that promises will be kept. That is the great producing factor in modern industry.

Now capitalism is to blame because it has not offered, as yet, to labor that security of the job which it has offered to the investors in the security of their investments. Capitalism is threatened because it has not furnished the working people a similar security to that which it has furnished to the investors. The workingmen are getting the idea throughout the world that the elements that produce wealth are the workingmen and the management ; and we have the Plumb plan, in which two million workers in the United States come forth to oust the credit system and let simply management and labor produce the wealth of the country. They would destroy the thing upon which the credit of the railroads is built, because they think that the producing elements are management and labor.

Well, that is much the same idea that they have in Russia, and that is the fundamental notion of modern laboring people spreading throughout the world. They do not appreciate that modern capitalism is based on faith in the future ; they have not themselves been given that same security. Capitalism to them is autocracy and insecurity. They have tried to get security by rough methods. Trade-unionism, closed shop, union shop, and so on are their methods of obtaining security of the job. Not until the capitalistic system, not

until the great financial interests that control this country, have learned that it is just as important to furnish security for the job as it is to furnish security for the investment will we have a permanent provision for industrial peace.

We have only begun in recent years to try to establish security of the job. The first effort made was eight or ten years ago in the workmen's compensation law—the accident-compensation law. That was the first comprehensive effort to establish security for the job. Unemployment no longer damages, as it did, the man who is hurt during employment. The next step is probably the similar treatment of sickness insurance.

In the case of accident compensation this curious thing developed: employers vigorously fought the legislation at first because it was going to increase the cost of production and the expenses of business; but after the law was enacted and the employers were compelled by law to pay compensation, they introduced a new element in industry—they introduced a safety expert. They developed a new department of industry. I knew of an establishment that figured that if the compensation law was enacted, their premium on insurance would increase from \$5000 to \$22,000 a year. That was what they were told by the insurance people and by their claim agent, and they were dreadfully scared. After the law was enacted, however, they changed their claim agent into a safety expert, and the very first year, instead of paying \$22,000 for compensation, or even \$5000, it cost them only about \$2500.

The accident-compensation law has accomplished the first little step toward giving security to the job. It has shown that the only way to establish security is by making it financially profitable. And so we shall make it financially profitable to business to eliminate unemployment on account of sickness, on account of changes in seasons, on account of fluctuations in business. Labor can never accomplish this result. The only possible accomplishment of it will come when the employer puts in his personnel department, his personal-relations department, his safety men, his welfare men, and his men who stabilize employment. We know that employers who have done this have made their jobs regular—they have regularized their work, and there is good reason to believe that all can do it if the inducements are adequate.

There are many ingenious methods that can be adopted. Yet it appears to me that we cannot get the large capitalistic interests awake to this subject of stabilizing employment unless the government takes hold of it. If we had a tax on unemployment of \$1 a day for every man who is laid off, we should soon find that capitalism would put its personnel experts at work to regularize the business, and they would have no tax to pay, because they would have stabilized the work.

The fundamental lines along which industrial peace is to be brought about are those which go to the psychology of the workingman and substitute in his mind something like that which we have in the mind of the investor. The employer who is willing to pay compensation for unemployment, who is willing to furnish what the workingman needs, knows that the workingman needs to have something to wait for and needs to have confidence in the future.

I visited a number of establishments this summer, making a special study of the circumstances under which efficiency had been increasing or decreasing, and found that notwithstanding some were complaining about labor's laying down on the job, yet in particular establishments the output had increased. What is the secret of it? It seems to me that in all these cases this was found to be true: a new principle had come into the business,—management had obtained a new view of labor,—and I may contrast it by the history of scientific management.

Mr. Taylor, as you know, started his wonderful development in scientific management by offering to the industrial workers a chance to better their condition. He appealed to the individual worker. But the modern scientific management of personnel appeals to the collective interest of all the workers in the business. It is beginning to recognize that the workingman does not want to have high wages for himself if by doing so he seems to deprive his fellow workers of high wages. It is as though we are upon a ship on the ocean—there is only a limited amount of products to go around; the man who saves his own life and lets the others go down cannot live with his fellows afterward. So it is with the modern workingman; he is continually haunted by the feeling that there is only a limited product to be distributed, and consequently even the better men, when appealed to individually to increase their wages, cannot

stand it to go ahead too far amongst their fellow workers. If they get out of the class of ordinary workmen and become foremen and superintendents, that is one thing ; but to stay in the ranks of labor and to earn much more than the others seems to be taking bread out of the mouths of their fellow laborers.

Modern management is learning to deal collectively with the workmen in the shop ; whatever one worker does to benefit that shop will benefit all of us—we are all going to be lifted up together. We are not going to set workingmen competing with each other and try to get one ahead of the others and appeal only to his self-interest. That was all right in times past, when the world seemed to be full of unoccupied resources, when anybody could go out and get all he wanted and yet not take it from anybody else. Now, as we are getting closer together, as business is getting on a large scale, the man who gets more for himself seems to be taking it from the others, and so we have that solidarity of labor which is a psychology that must be recognized by all management.

This psychology should be combined with the idea that the business itself is the place where we shall have our living—our confidence in the future. I visited Mr. Ford's factory recently. Mr. Ford does not have an idea there of cultivating the efficiency of his laborers. His great profit-sharing system, as you know, is a distribution not to men who are efficient, in order to increase the output, but to men who lead a "clean and wholesome" life—they get the profit. The men who do not lead a clean and wholesome life do not get profits. John D. Rockefeller, the senior, says that Ford's plan is the industrial miracle of the age. Well, the Ford plant is the psychological miracle of the age. It has not gone after efficiency first ; it has gone after the clean and wholesome life. Efficiency is a by-product of the clean and wholesome life.

When I visited the White Motor Company I was impressed with the fact that it is not in detailed methods of piece and bonus payments that they try to reach the individual and increase his production, but it is in creating the conviction in every man in that industry that that is *his* industry, that the future of that concern is *his* future. Thinking and planning for the future is the White Motor's big efficient machinery of production, just as security for investment is. Get capital to think of the security of the job and it

begets efficiency of labor. We must look upon efficiency as a by-product and not as the main thing in industry.

It seems to me, to transfer this to the national scale, here is where capitalists have fallen down. Mr. Gary has fallen down representing the capitalistic system; labor organizations have fallen down; Mr. Gompers, representing trade unionism, has fallen down; the politicians have fallen down in bringing about industrial peace.<sup>1</sup> Where shall we look for any people in the United States who have the preventive idea? who can look forward and plan for the future? who will base the bringing about of industrial peace on knowledge of labor and on knowledge of security? We must look for it in placing the personal-relations department ahead of the engineering, commercial, and production departments of industry. It is only in the personnel department that we find the beginnings of true scientific management—the department of scientific human relations, which appreciates and knows what are the fundamental things for labor's efficiency. If we can have our modern industry conducted as a personal-relations industry, above the commercial department, above the engineering department, above the manufacturing department, above the production department, and if we could bring together on a national scale, instead of our great financiers, instead of our great labor unions, instead of our politicians,—if we could bring together those who are developing the modern personal-relations method, then I think we might work out some plan for bringing about industrial peace.

Yet it is because, and to the extent that, personal-relations departments are coming to recognize some form of collective bargaining or collective government that they are fit to come forward as national leaders at this time. Socialism has no need of personal relations in management, because, according to Marx's theory, "social labor power" moves on to its historic goal regardless of the individual will. Capitalism had no need of personal relations, because capitalism was but adjustment to the laws of demand and supply, over which individuals and classes have no control. But with our great corporations and associations on the one hand and organized labor on the other it is only by a science of *collective* management that capital

<sup>1</sup> Referring to the first Industrial Conference called together by President Wilson, which split on the question of collective bargaining.



and labor can work in harmony and security. It becomes then a science of political economy as well as a science of business.

The science of political economy began with individual bargaining. Adam Smith, its founder, in 1776, laid its foundation, and in an interesting and important chapter pointed out the great evil of collective action. One of the most serious things, he thought, that industry had to contend with was association of capitalists. The great evil of an association of capitalists was that when they combine they deprive the minority of their liberty. The majority vote of the association binds the minority. Consequently the combination—the association of capital in corporations—was condemned by him as intruding upon the liberty of the individual. He even went so far as to condemn social gatherings of merchants, for he said: "When your merchants come together, what does their conversation turn to? It does not turn to increasing efficiency. It turns to hatching up some conspiracy against the public."

Adam Smith started political economy upon the individualistic basis. He spoke at a time when industry was throttled by guilds and governments. The French Revolution overthrew that system. The French Revolution was an attack by the small manufacturers and merchants, the small capitalists and workers, against the government and the governmental regulations of the time. One of the great statutes of the French Revolution was that statute which provided that no association, either of merchants, manufacturers, or laborers, should be permitted. That statute stood on the statute books of France until the year 1884, when it was finally repealed. Meanwhile, there had grown up, unknown to Adam Smith, unknown to the French Revolution, our modern system of corporations. When it came to the middle of the nineteenth century, about the year 1850, for the first time, with our general incorporation laws, it was made possible for any association of capitalists to come together and form a legal association to conduct their business. Prior to that time the only way in which you could form a corporation was by going to the legislature and asking for a special charter. With the general incorporation laws, beginning about 1850 in this country, it became possible for any group of capitalists to get together, simply file their articles with the secretary of state, and become an association. That violated all the principles of political economy and the French Revolution.

The modern business world is conducted upon the principle of association, of requiring the minority in a group to submit to the will of the majority, and if one person happens to be the principal stockholder, then all the minority obey the will of that one person. We are not living in the time of the French Revolution; we are living in the time of the Russian Revolution.

It differs entirely from the French Revolution in that it is based upon the principle of government by organized labor—a scheme first propounded seventy years ago by Karl Marx, that this capitalistic system must be overthrown and that now was the time for workingmen of the world to unite. Russia has given us the fruition of that theory, based upon the organization of labor.

Our Western civilization today is confronted by an entirely different situation. At the time of the French Revolution we had a new world opening up to which the oppressed peoples might escape. This has been going on until at the present time this new world is pretty well occupied. Great corporations have sprung into being. The natural resources are controlled, and if the workingman is to have any opportunity, he cannot secure it by going west, by escaping from Europe and settling on the soil of America. When he escapes from Europe he comes to America and works for a corporation. Capital has associated—the law has made universal the right of association on the part of capital. Thus the workingman coming into this new world, with the resources occupied, without any homestead law or opportunities to become independent, can secure his advance only as he works with the thousands for the corporation.

Furthermore, the small employers who are not formed in corporations are more and more uniting in associations. We have all kinds of associations—associations of farmers, associations of merchants, associations of independent manufacturers: they are formed for all classes and purposes and they are recognized in law. They are created into employers' associations, operating with a formal policy regarding labor, so that the modern workingman is confronted with a situation where associated effort is the rule of the day, where employers have compelled employees to submit their individuality to the control of the majority in these associations and corporations.

The workingman of modern life, then, is imbued largely with these ideas, which have reached their disastrous victory in Russia.

He is welcoming the idea, at least toying with the idea, that by grouping together in associations he may gain from his employers that which he cannot get by escaping to the natural resources of the country. And whether we will it or not, whether we wish for it or not, the workingmen of modern life, in so far as they are capable of organizing, are doing so.

It is not a theory of collective negotiation or collective government that we are confronted with ; it is conditions and facts. Workingmen are combining and coöperating more and more ; and the more they get intelligence, the more they get Americanized, the more will they combine. In this combination of workingmen they attempt to accomplish through collective power what they cannot accomplish as individuals. The feeling of solidarity is arising amongst them—the feeling that for the large majority there is no opportunity for themselves as individuals except as they move upward in a mass, that if one individual outdistances the others he is injuring the others, but that if he uses his influence in bettering his own condition so that, at the same time, it will lift up the others, then that is a desirable thing. This feeling of solidarity, this feeling of unity, is forcing him, as it were, throughout the Western world to assert what collective power he can. The employer who starts out with an idea of individual bargaining is confronted by the fact that he perhaps will not have a chance to enforce his ideas.

There are two classes of employers, apparently. There is that class of employers, corporations, or individuals who conduct their business in such a superior fashion, who have such personal relations developed with their employees, that labor has no desire to force a collective arrangement upon them. There is another class of employers who, either through their own attitude or through the stress of competition, are not free to deal with labor on these higher personal relations. Labor organization has not come into existence at all to deal with that first class of employers. It has not been provoked in order to overcome any resistance on their part. It has come in solely in order to use coercion with reference to the other class of employers. The collective dealing which we are discussing is not to be considered universal ; it is not to be considered as applying to all employers or all capitalists. It applies only to those who need it because they will not or cannot meet new conditions.

Labor organization, however, has this defect: when once it has started, when once it has begun to apply, it stretches out to reach all employers in a competitive area. By force of circumstances it brings the others into the fold. A small number of employers or corporations may be above the level, but a large proportion are in that field where there is a contest and a conflict going on.

If we let our vision pass from the time of Adam Smith and the French Revolution, when individual bargaining was the ideal of political economy, down to the time of the Russian Revolution, when these very corporations themselves, although they have become enormous, are treated as though they were individuals,—if we allow our view to pass over this century, we shall widen our comprehension and not only have a place for the individualism which produced the French Revolution but have a more intelligent method of meeting the collective idea which has shown itself in the Russian Revolution.

JOHN R. COMMONS

UNIVERSITY OF WISCONSIN

## II

### AMERICAN EXPERIENCE WITH WORKMEN'S COMPENSATION<sup>1</sup>

EXPERIENCE under the American compensation statutes has justified in fair measure the hopes and claims of those who have advocated the legislation. It has not been millennial. But it has realized no small part of the advantages which were predicted. So much may be stated with entire confidence and after due allowance for the present incompleteness of definitely relevant data.<sup>2</sup> In fact, a reasonably confident conclusion of that character might be reached without examining any of the detailed reports upon the practical working of the statutes and with only a knowledge of the rate at which the compensation system has been extended from state to state. Ten years ago the early and ready acceptance of workmen's compensation in other lands was urged as a strong argument for the enactment of compensation legislation in this country. It was pointed out that within a quarter century the newer principles and policy for the relief of employees injured in industry had been adopted in some forty foreign jurisdictions, including all of the industrially important ones, and that, once adopted, nowhere had there ever been any serious proposal to give them up.

But foreign readiness to enact compensation laws has been more than matched in the United States. It is not yet nine years since the first of the really effective American workmen's compensation statutes were enacted.<sup>3</sup> Yet such laws now have been enacted in forty-two of the forty-eight states and in Alaska, Porto Rico, and Hawaii. Only the District of Columbia, North Carolina, South

<sup>1</sup> From *American Economic Review*, Vol. X (1920), pp. 18-47.

<sup>2</sup> Conditions growing out of the war have delayed and even suspended the publication of data in several of the states, including some of the largest of them, whose experience would be most instructive. Here may be mentioned New York, Pennsylvania, Ohio, and Illinois, as well as a number of others.

<sup>3</sup> In Kansas and Washington on the same day, March 14, 1911.

Carolina, Georgia, Florida, Mississippi, and Arkansas are still without compensation statutes. And a late appropriation for the District of Columbia brings all public employees in that jurisdiction under the provisions of the federal workmen's compensation law. It is not credible that the states would have taken action so speedily, one after another and in full knowledge of what had been done elsewhere, often in adjacent states, except upon conviction that the action taken was of proved wisdom. Doubtless none of the tardier legislatures knew every effect of the earlier enactments. Nobody knows as much as that even now. But they did know, through universal report and belief, that of evil effects there had been as good as none and that general results had been eminently satisfactory. And upon such knowledge they acted.

There is other general evidence of the same presumptive character. As in foreign lands, so in America there has been never a voice raised for the repeal of the statutes. Rather the tendency of legislation everywhere has been to go farther, to strengthen and improve the first laws. The field of the acts has been broadened somewhat by the inclusion of additional workmen. Rates of compensation have been increased in various ways—by higher percentile ratings upon wages, by raising the fixed maxima, by shortening the waiting periods, by extending the duration of the payments, by more liberal provisions for medical care, and in still other minor ways. The original limitation to accidental injuries has been done away in a few states.<sup>1</sup> The certainty of payments to injured employees has been made greater by stricter requirements of insurance and by corrections of administrative procedure. And the simpler and more summary administration by boards or commissions, rather than through the courts of law, has been increasingly favored.

By many tokens employers have shown their approval of the system. There are, to be sure, some regrettable failures of the optional statutes to win acceptance by employers.<sup>2</sup> But these are not very numerous, relatively. Much the larger numbers of the employers affected have accepted their new obligations cheerfully. In the states in which the employer's acceptance of the optional

<sup>1</sup> Diseases now are included in California, Connecticut, Massachusetts, North Dakota, and Wisconsin.

<sup>2</sup> See U.S. Bureau of Labor Statistics, Bulletin No. 240 (1918), p. 34.

statute is presumed, in the absence of his notification to the contrary, positive rejections have been few. And in states with optional statutes there have been a great many purely voluntary elections of the compensation system by employers who have been under no constraint of fear that they might have to face suits at law without their old-time common-law defenses. So in California in 1918 there had been more than 20,000 such voluntary elections which had been formally notified to the Industrial Accident Commission, and in addition to these an unknown number of others which had been legally implied by the taking out of compensation insurance.<sup>1</sup> And, in fact, a good part of the liberalizing amendments to which reference has been made have had the support of employers, or even have been proposed by them.

Employees have become even more cordial than employers in their approval. Unorganized laborers, of course, on the farms and elsewhere, never were on record, or even heard, as to their wishes about workmen's compensation. But organized laborers, as a rule, were at first skeptical or positively hostile. It was but natural that the representatives and spokesmen of the labor unions, knowing little about the measures proposed for their avowed benefit, and by outsiders at that, should be doubtful of the real advantage to themselves. The verdicts for large sums now and then won in personal-injury actions loomed in their minds as the grand prizes of the lottery loom in the minds of ticket-holders. And they did not appreciate fairly the fact that the compensation awards, limited although they might be, would come very much oftener than the rich damage verdicts. In 1909 Mr. Samuel Gompers, as president of the American Federation of Labor, declared his preference for an improved employers' liability law. Two years later the president of the Connecticut Federation of Labor appeared in his official capacity at a legislative hearing to oppose a pending workmen's compensation bill, announcing that the organized laborers of Connecticut wished rather a simple abolition of the common-law principle of the fellow servant.

<sup>1</sup> Report of the Commission for 1917-1918, p. 6. Hereafter in this article definite references usually will not be cited for statements based upon official reports of the various compensation boards and commissions. In most cases the statements themselves will indicate sufficiently the source of the authority, the state, and the year, and any interested reader will find the page without difficulty.

In Illinois the opposition to early proposals of workmen's compensation had some of its sharpest, even bitterest, expressions by organized laborers. But now, after a few years of experience with compensation, laborers, both organized and unorganized, are generally enthusiastically in favor of it, not necessarily in its present typical form and with its commonest limitations, but certainly as a general principle and in contrast with employers' liability. Perhaps the great railway unions, to whose highly paid members the modest maxima of the ordinary compensation awards appear particularly unjust, are the only important bodies of laborers who cannot be considered as now having renounced their former hostility. . . .

But much more to the point, under the American system of government, is the fact that the constitutionality and the general legal propriety of workmen's compensation may be said to be now definitely established—established, that is, beyond any possibility of unsettling. For they have been affirmed abundantly in the highest courts, both state and federal. Early unfavorable decisions in Montana, New York, and Kentucky, and in lower courts elsewhere, have been made quite negligible by changes in the provisions upon which they turned, by constitutional amendments,<sup>1</sup> and by the accumulated weight of later favorable opinions. Of these there have been a great many, perhaps fully half a hundred by now, which may be said to have covered questions of constitutionality, sustaining the statutes of more than a score of the states, some of them of the so-called optional type and some directly compulsory.<sup>2</sup> It is true that the scope of some of

<sup>1</sup> As in New York, Ohio, California, and Wyoming. The New York amendment of November 4, 1913 (Article I, Section 19), is of general interest in political science, as a perfect illustration of the popular recall, or reversal, of a judicial decision. Both in form and in substance it is nothing else. It made not a word of change in existing provisions of the constitution, but merely declared, in effect, that the decision of the Court of Appeals in the *Ives* case—which had annulled the compensation statute of 1910—was reversed, or recalled. It enacted simply that "nothing in this constitution shall be construed to limit the power of the legislature to enact laws for" [compulsory workmen's compensation].

<sup>2</sup> Optional: Illinois, Iowa, Kansas, Louisiana, Kentucky, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Jersey, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, West Virginia, Wisconsin. Compulsory: California, Hawaii, New York, Washington, Wyoming. Perhaps other states should be added. It would be gratuitous, and tedious also, to keep the list up to date.



the favorable judicial opinions is not quite so comprehensive as at times is assumed and that, therefore, their weight is not quite so overwhelming as the list of states might indicate.<sup>1</sup> But none the less it is now entirely safe to conclude that no attack upon any essential feature of either optional or compulsory compensation statutes will prevail in the highest courts, whether state or national. Notwithstanding volumes of overfine analysis and distinctions, the one strictly vital question is whether an employer may free himself from the obligation to pay compensation by proving his own freedom from negligence or fault. And that he may not claim such a right, in the face of a statutory declaration to the contrary, is determined sufficiently in at least five decisions from the Supreme Court of the United States,<sup>2</sup> to say nothing of a score or more of cases in state supreme courts.

It therefore may be taken for settled that henceforward the workmen's compensation system is to be a part of our industrial order. If there were less adequate sanction for it in definite principles of law, strictly construed, there still would be abundant sanction in the great principle—legal, too, in a sense—which Justice Holmes invoked in 1911 in his epoch-making opinion in the *Noble bank* case.<sup>3</sup>

It may be said in a general way that the police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality and strong and preponderant opinion to be greatly and immediately necessary to the public welfare.

In view of this principle, it well might be that a decisive consideration in favor of the constitutionality of the compensation acts should be found in that prompt and general legislative acceptance and that present popular approval to which attention has been turned.

<sup>1</sup>The early favorable decision in Wisconsin, in the case of *Borgnis et al. v. Falk Co.*, 147 Wisc. 327; 133 N. W. 209, has been cited as authority in nearly all of the later decisions sustaining the optional statutes. But the Wisconsin law does not abrogate the defense of assumed risks in so far as the risks are "inherent" or "necessary." Accordingly, the Falk decision cannot properly be cited as authority for sustaining laws which do abrogate the doctrine of assumed risks completely.

<sup>2</sup>*Northern Pacific Railway Co. v. Meese*, 229 U. S. 614; *N. Y. C. R. R. Co. v. White*, 243 U. S. 188; *Hawkins v. Bleakley*, 243 U. S. 210; *Mountain Timber Co. v. State of Washington*, 243 U. S. 219; *Middleton v. Texas Power and Light Co.*, 249 U. S. 152.

<sup>3</sup>*Noble State Bank v. Haskell*, 219 U. S. 104, 111.

Mr. Frederick L. Hoffman's<sup>1</sup> estimates of the numbers of industrial injuries suffered in the United States are admittedly rough, with no claim of close accuracy. Nevertheless they are much used as being the best comprehensive estimates there are—one might perhaps say the only ones. Such as they are, they may serve as the basis for some suggestive rough computations. Mr. Hoffman estimates that there are some 25,000 fatal industrial accidents a year in the country and about 700,000 nonfatal injuries disabling for more than four weeks. In Massachusetts, in the administrative year 1913–1914, the industrial accident board had reports of 96,382 non-fatal injuries. Of these, 55,113 disabled the sufferers for more than one day; and of these, in turn, 11,836, or 21.5 per cent, disabled for more than four weeks. If the same relative durations of disabilities as in Massachusetts hold for the country as a whole, then we have each year some 3,255,800 nonfatal industrial accidents disabling for more than one day and no less than 5,690,000 reportable accidents.

There have been no attempts to sum up the grand totals of compensation awards for all of the states. Nor would it be worth the necessary effort to do so. Even within a given state there sometimes are such changes of method in the presentation of data that items are of varied or uncertain significance. It must suffice now to submit typical figures from several of the states, figures which, unfortunately, are not generally or closely comparable. In Wisconsin the cash benefits actually paid from the beginning, in 1911, until June 30, 1918, had amounted to \$5,144,000, in addition to some \$1,773,000 for medical care, making thus a total of \$6,917,000. The losses reported under the comprehensive insurance provided in West Virginia amounted to \$6,678,237 in the five years 1913–1918. In California there had been awards of at least \$13,370,000 from January 1, 1914, to December 31, 1917. In Ontario in the four years 1915–1918 there were cash awards to the amount of \$9,332,524, aside from all provision of medical care. In Massachusetts in the first six years of compensation there were awards of \$20,253,000 in cash and medical care. In the first three and a half years of the New York law benefits to workmen whose employers were not carrying their own risks, about 85 per cent of all, amounted to \$36,631,000.

<sup>1</sup> Paragraph inserted from same author in U.S. Bureau of Labor Statistics, Bulletin No. 212 (1916), pp. 359–377.

Large as these figures are, they become more impressive when it is noted that in each case the periods covered include the first years of compensation experience, when a number of conditions combine to keep payments, and even awards, far below the heights to which they naturally soon must rise. After a few more years of experience the amounts of the benefits will be much greater than they are now. So, of the total of \$9,332,500 awarded in Ontario in four years no less than \$3,514,600 belongs to the one year 1918, when medical care to the amount of \$370,000 was also provided. In Pennsylvania in 1917, the second year of compensation, benefits paid and awarded amounted to \$7,161,000, while the figure for the next year was \$11,640,000. In Illinois, in the single year 1917, cash benefits to the amount of \$4,906,000 were paid. And of the \$20,250,000 awarded in Massachusetts in six years \$4,647,500 was for the latest year reported upon, 1918.

Yet even in Massachusetts the awards are still far short of their normal maximum. Even if there should be no increase in the number of injuries or in the scales of benefits, and if workers already have learned fully about the law and never neglect to claim their rights under it, the maximum cannot be reached until after 1924. For it was in 1914 that the term for the payments of benefits for fatal injuries was extended to 500 weeks, approximately ten years. And so it is in other states. Since there are many states which allow 500 weeks or ten years of payments for death and permanent disability, as well as a number which continue payments on account of these same injuries during the life of the beneficiary, it is clear that it must be a great many years before the stoppage of payments which will have run their full term will balance the payments which will be starting anew. But all influences must be counted at their true weight. So far as the sums paid on awards may be increased by the growth of industry and its personnel or by a rise of wages *pari passu* with general prices, there may be no change either in the real value of the benefits for those who receive them or in the real burden which the awards place upon industry. But so far as injuries may become more frequent or more serious through the introduction of more powerful or more rapid machinery or through the taking on of new and untrained operatives, or so far as workers may seize more fully the advantages which the laws offer them or even may lean more

heavily upon the law, as they appear to have done in certain European lands,<sup>1</sup> there must be for an indefinite time to come an increase in the values, real as well as in mere money, of the benefits which American employees will receive under the compensation laws. There is every prospect, too, that the laws will be made more comprehensive—not only will be extended to the few states which now do not have them, but everywhere will come to cover workers more generally. But even if the country as a whole, by one change and another, should never come to make more liberal allowances than had been developed in Massachusetts in 1918, the total for all of the states would be not far from \$125,000,000 or \$150,000,000 a year. If the experience of Pennsylvania and New York be taken as an indication of what is to come, the figures must be placed higher, perhaps at \$200,000,000.

Such sums for a probable future are truly enormous. But when the amounts now paid out or likely soon to be paid out, a few or several millions yearly in a single large state and a few hundreds of thousands or even less in smaller states, are averaged over the total numbers of beneficiaries they do not appear large. For it must not be forgotten that a great many persons are the victims of industrial accidents each year. Thus the total payments in Wisconsin during practically the whole of her compensation experience, from September 1, 1911, to June 30, 1918, reduce to about an even \$100 for each compensated injury, cash benefits and medical care both included. Other states show rather lower average figures. In California in 1916 the average payment in all compensated cases was \$93.20. In Iowa total benefits averaged \$63.71 in 1917 and \$90.46 in 1918. In Massachusetts during the first five years of the law the average costs per case for all payments, as actually made and estimated to be outstanding, were: 1913, \$40.53; 1914, \$43.58; 1915, \$43.38; 1916, \$43.56; 1917, \$38.98.

These figures and others of the same general character are not very instructive. They are not fairly comparable one with another. They run in terms of a vague general average of widely different particulars; and they are affected in many ways by the situations in the several states. The more recent the institution of the compensation system the wider the difference between awards and actual payments. And the provisions of the statutes vary so widely, as to ratings of

<sup>1</sup>Ludwig Bernhard, *Unerwünschte Folgen der deutschen Sozialpolitik*.

awards, extent of medical care, duration of payments, and so on, that general averages yield no real information as to what compensations are received for definite injuries under definite conditions.

It is somewhat more instructive to consider the awards made for specific injuries, of which the practical consequences may be understood readily. For fatal injuries the average award made in Connecticut in 1915 was \$2269. In Illinois in the same year awards for the same injury averaged almost exactly the same—\$2273. In California the awards averaged \$2445 in 1917 and \$2625 in 1918. In Pennsylvania for 1916, 1917, and 1918 the figures were \$2383, \$2272, and \$2659. In the first year of the New York law, awards for fatal injuries averaged \$3241. In Oregon, in the two-year period 1915–1917, the awards, where there were dependents, averaged \$5752. In Massachusetts, for the first five years the figures were \$1367, \$1781, \$2970, \$2603, and \$2631. In Ohio in 1915 the amount was \$3098. Perhaps it will be accurate enough to put the general average for all of the states at about \$3000, or something less.

The payment of from \$2500 to \$3000 is manifestly inadequate compensation for the death of a breadwinner. None can deny that. But it must be remembered that the purpose of the statutes never yet has been to make full compensation for the pecuniary losses due to injuries. The pertinent question is whether such amounts, painfully inadequate as they are, are not greater than the amounts paid and received on account of the death of industrial workers before the compensation system was introduced. And, in this connection, it will not do to raise for comparison the sums awarded by way of damages in suits at law. Probably such damages did amount to considerably more than \$3000, on an average. But they came only after protracted and expensive litigation, so that their net amounts for successful litigants should be reduced much for purposes of comparison with present compensation awards, which are made more promptly and with only trifling cost to the beneficiary, or none at all. When due allowances have been made for direct and indirect costs of litigation, a \$3000 verdict, or even \$5000 or \$10,000, becomes a much smaller thing than at first it appears to be. But even more important is the sad fact that, when employees were killed at their tasks, suits at law were not always brought and pushed to a successful issue. In a great majority of the cases no suit was brought. And such suits as

were brought were not always won by the plaintiffs. For much the larger number of fatal injuries there was either no payment at all or only such payment, large or small, as the employer might feel inclined to offer. And in all too many cases he felt inclined to offer nothing, or only a piteously small sum.

For information upon this unpleasant subject there are now no more valuable data than the figures presented by the state commissions of inquiry which reported some ten years ago with reference to the desirability of enacting compensation laws. These show that in great numbers of cases employers, even some of the largest and most prosperous of them, frequently neglected to make any payment whatever to the dependents of those who had been killed in their service. In many cases money was paid, but in sums so petty as to be little better than nothing—\$50, \$100, or perhaps a little more. Cases in which the payments ran in thousands were extremely rare. It may be a not unfair sweeping generalization to say that under the so-called liability laws payments of any amount were not made in more than a third of the cases of fatal injury to employees. And the average of the sums actually paid would be in the small hundreds. A careful study has shown that in Pennsylvania shortly before the passage of the compensation act the average amount paid on account of fatal injuries was \$261,<sup>1</sup> at a time when under the compensation laws of Connecticut and Ohio the corresponding figures were \$2269 and \$3098. The next year in Pennsylvania the average compensation award on account of fatal injuries was \$2383, while in 1918 it was \$2659, a little more than ten times as much as had been secured under the liability laws.

There can be no reasonable doubt that the compensation awards made for fatal injuries do mean a large increase from the petty and uncertain sums which dependents received under the liability laws. The differences appear so great in the loose comparisons which it is possible to make that, to a complete certainty, they could not disappear after the fullest collation of data. Indeed, the differences now apparent may quite as likely be below the reality as above it. And it must not be forgotten that such sums as now are received come promptly and without appreciable costs to the recipients. It is true that much the greater number of compensation awards for fatal

<sup>1</sup> U. S. Bureau of Labor Statistics, Bulletin No. 217 (1918), p. 107.

injuries, as for other injuries, are paid in a continued series of small sums, not at once in a lump, and that in so far the awards must be discounted for purposes of close comparison with the payments made in full at one time under the old order. But again the difference in amounts is so much in favor of the compensation awards that a full discounting of them could not bring them down to or near the level of the liability payments. It might, indeed, not be unreasonable to maintain that, on the whole, the series of continued small payments are the better arrangement for beneficiaries. That, at least, has been the judgment of those who made the compensation laws.

An examination of the compensation awards for nonfatal injuries leads to similar conclusions. In Pennsylvania the awards for the loss of an eye in the three years 1916-1918 were \$959, \$1065, and \$1198. In Wisconsin in the four years 1914-1918 the cash awards, aside from medical care, for the loss of an eye were \$990, \$1033, \$1033, and \$1078. In California in 1917, the first year with relevant reports, the average award for the loss of an eye was \$1137. These figures too are pathetically small. But unquestionably they show payments much greater than were made for the loss of an eye before the days of workmen's compensation.

If it be true that the compensation system has meant the payment of much larger sums to those who have suffered from industrial accidents, it should be quite safe to infer at once that injured workers and their dependents have been made much better off. There is, of course, a possibility that in a given case the compensation award may prove of little real advantage to the recipient, or of no advantage at all. But such cases must be so very exceptional that they need not be considered. It is, therefore, almost a work of supererogation to show in definite detail that recipients actually have been benefited. Yet this has been done. A painstaking study, carried out under the United States Bureau of Labor Statistics, has traced the uses and consequences of the compensation awards in a number of concrete cases.<sup>1</sup> And the results are exactly such as were to be anticipated. It appears that in Connecticut and Ohio there was an unmistakable effect in preserving family life for the dependents of those who had

<sup>1</sup>"Effect of Workmen's Compensation Laws in Diminishing the Necessity of Industrial Employment of Women and Children," U. S. Bureau of Labor Statistics, Bulletin No. 217 (1918).

been killed or permanently disabled. Children were enabled to continue at school. Mothers were enabled to remain in their normal relations to their families. The Ohio Industrial Commission has issued a bulletin devoted wholly to showing the uses made of lump-sum payments on account of death and permanent disabilities. The bulletin is illustrated profusely. And the pictures of tidy little homes bought and of modest business places established with the lump sums bring one almost to the point of declaring it a happy fate for an Ohio woman to lose her husband by an industrial accident. . . .

If the compensation system has increased severalfold the pittances which formerly were paid to the victims of industrial accidents, that in itself is enough to justify the system fully. But workmen's compensation laws may have far more beneficent effects than can be seen in the payment of any awards for injuries, however liberal these may be. It is vastly better to prevent disablement, maiming, and death than to provide even the most generous allowances to the injured and to the dependents of the slain. And, while in the years of agitation for workmen's compensation perhaps the greatest stress ordinarily was laid upon the assurance of pecuniary indemnifications for injuries suffered, few American advocates of the compensation bills failed to claim that the proposed measures might be expected to reduce the numbers of accidents. Indeed, it would be unfair not to allow that the more earnest advocates were always fully aware of the possibilities of accident prevention which lay in their proposals. If they did emphasize the other consideration, probably it was because of a well-grounded conviction that there was more persuasive argument in it. To state results which must follow at once, directly and in definitely measurable magnitudes, was likely to be more effective argument than to make claims which, in the nature of the case, it would be impossible to prove, at least to the conviction of an interested doubter.

And it is not seriously to be questioned that already the American compensation laws have benefited workmen, and other classes as well, much more by stimulating intelligent and successful campaigns for industrial safety than by adding some millions to the yearly payments on account of accidents which have happened. . . .

Some of the largest of American employers and many of the smaller ones had well-organized plans and agencies for the reduction



of accidents among their employees. And results were developing, as appears from several reports of undeniable significance. Statistics of the safety movement in the iron and steel industry and in machine making, which have been published by the United States Bureau of Labor Statistics,<sup>1</sup> show reductions of accident frequency and severity more rapid before there were any American compensation laws than later. Substantially similar is the lesson from the coal-mining industry, as its figures have been prepared by the United States Bureau of Mines. . . .

But more might be said. It would be ungracious now, when American employers are so hearty in their support of compensation, to attempt to say how many of them there are who were induced to begin or to quicken their efforts for the safety of their workpeople simply and solely by the fact that the new compensation laws made accidents expensive for the business, or more expensive than before. Moreover, such an attempt would fail of any definite success. And so this unpleasant topic may be dismissed with the brief but confident statement that there were many such employers. Of this all are convinced who have watched closely the bringing in of the compensation statutes in one or more of the states. There was sinister significance in the objections which employers raised against any compensation enactments, in their strong efforts to weaken the provisions of bills which promised to become laws or to prevent the inclusion of themselves under them, and in their panic eagerness for the adoption of safety measures and appliances as the laws went into effect. There is, therefore, no doubt whatever that in the directest possible way the compensation laws have conduced to the promotion of safety policies, and thus to the saving of life and limb, by exacting more money from employers in whose service injuries are suffered.

It is not possible to reach any safe conclusion as to the actual effects of the compensation movement, or the compensation statutes, in the promotion of industrial safety by a superficial reading of the general statistics of accidents during the few years since the American laws have been in force. Perhaps it will be impossible to reach any such conclusion of general validity by any use of the current statistics. For the influences which the compensation laws must be

<sup>1</sup> As in its Bulletins Nos. 234 and 216.

presumed to have exercised have been blended with other influences. As in Europe in earlier years, so now in the United States the compensation laws, with their requirement of a return of industrial accidents and with their promise of money to the injured, must tend for years to increase the returns of accidents, even while there may be no increase of actual numbers. And nobody knows how important this consideration is or how long it will continue to be important. Again, there were, as has been seen above, unmistakable downward trends in the American accident rates, at least in certain important industries, before the era of compensation. And nobody can tell how much of a later decline might be merely a continuance of this early movement. Still further, large account must be taken of the industrial conditions brought in by the great war. An influence in modern times always making for higher accident rates is in the technical progress and the expansion of industries generally. The appliances of modern industry are ever becoming vaster and more powerful, and their speed is ever faster. The tension is ever higher. The labor force is ever being augmented by the taking on of new and untrained operatives. And all of these conditions and tendencies have been found in abnormal degree in American industry during these past four or five years, while the compensation laws have been taking effect.

While, then, there has been of late years one large force (the general safety movement developed under the compensation laws and independently of them) making for greater safety in American industry or for an appearance of it, as reflected in the statistical returns of accidents, there have been two making in the opposite direction (the progress and expansion of industry and the fuller reports which the compensation laws secure). Accordingly, there is nothing surprising in the fact that nearly all state reports show larger and larger numbers of accidents and probably would show also an increasing rate of accident frequency if the figures were all presented in such manner as to reveal the true situation. Nor is there anything highly instructive in this same fact, at least there is not anything definitely instructive as to the effect of compensation laws upon accident frequency or severity. It is, indeed, rather disconcerting, at first glance, to read that the accidents reported to the Massachusetts Industrial Accident Board rose from 90,631 in 1912-1913, the first

year, to 174,372 in 1916-1917, and that corresponding figures for Maryland rose from 20,348 in 1915 to 42,570 in 1918, for West Virginia from 11,418 in 1913 to 24,379 in 1918, for Washington from 11,896 in 1913 to 27,306 in 1918, and in New York from 225,391 in 1915 to 286,871 in 1918. But these typical increases are explained easily by a reference to the familiar forces mentioned just above, and most largely by the industrial conditions of the war period. So in Massachusetts the rise in the number of reported accidents was surprisingly small until the war began to show its influence. The increase was only from 90,631 to 95,769 between 1912-1913 and 1914-1915, or less than 6 per cent; whereas in the next two years there was an increase of more than 80 per cent. In Washington the increase from 1912 to 1915 was only from 11,896 to 13,162; whereas in the following three years the accidents more than doubled.

Indeed, it is reasonably clear, where careful and comparable returns of accident frequency are to be had for a term of years, that the campaigns for safety have had their natural influence uninterruptedly throughout these latest years of unprecedented industrial activity. There are important branches of American industry, not unaffected by war conditions, in which some influence—presumptively the general movement for safety—has been operating continuously against the unfavorable influences arising out of the war and finally has overcome them. This pleasant truth may be read in the table on page 32 showing total accident frequencies per 1000 three-hundred-day workers in certain plants or industries.

That the tendency toward a lower accident rate, where this is to be observed, has been due mainly if not entirely to the efforts of employers, the employed, the insurance companies, and the public authorities to promote industrial safety is not difficult of proof. But the proof is not to be found in general accident statistics, which at their best can but show the joint effect of several combined forces. It is to be seen rather in the *a priori* certainty that to cover dangerous machinery and in a thousand other ways to fence against the ascertained cause of accidents must make for safety, and in the records of a great number of individual employers. The records of certain few very large corporations, as the United States Steel Corporation and the International Harvester Company

YEAR	1 <sup>1</sup>	2 <sup>1</sup>	3 <sup>1</sup>	4 <sup>1</sup>
1905 . . . . .	300	...	...	...
1906 . . . . .	214	...	...	...
1907 . . . . .	189	242	...	6.19
1908 . . . . .	150	...	...	5.45
1909 . . . . .	174	...	...	...
1910 . . . . .	134	184	...	5.31
1911 . . . . .	112	174	...	4.97
1912 . . . . .	153	192	...	4.46
1913 . . . . .	115	156	175	4.70
1914 . . . . .	74	113	126	4.66
1915 . . . . .	48	111	125	4.44
1916 . . . . .	96	101	137	3.94
1917 . . . . .	85	81	104	4.25
1918 . . . . .	...	...	87	...

(if it be not invidious to cite employers who are conspicuous rather for size than for any superiority of their plans or motives), have become a part of the world's best-known economic data. But there are many smaller employers who have records quite as creditable. It is not profitable to elaborate the obvious. And if anyone doubts the efficiency of well-organized and persistent efforts after industrial safety, he may find most impressive evidence in the records of establishments with safety appliances and in organizations and establishments without them. In iron and steel mills of three groups the total accident frequency, per 1000 three-hundred-day workers, was found to be 167.1, 272.4, and 507.9, according as the plants had safety systems fully developed, in course of development, or not developed at all.<sup>2</sup> In machine-building plants the accident frequency was found to differ as follows in three groups of plants, according as there was or was not a good safety organization:

<sup>1</sup> Column 1 represents one large steel mill with from 4575 to 10,862 employees, and column 2 represents a group of smaller steel mills with from 27,632 to 108,994 employees. Both of these sets of figures are from the U. S. Bureau of Labor Statistics, Bulletin No. 234, pp. 15-16. Column 3 represents iron and steel mills amounting to about half of the industry in the United States, and the data are from the U. S. Bureau of Labor Statistics, Monthly Labor Review, Vol. VIII, No. 6 (1919), p. 234. Column 4 shows fatal accidents only in coal mining, as reported by the U. S. Bureau of Mines.

<sup>2</sup> U. S. Bureau of Labor Statistics, Bulletin No. 234 (1918), p. 204.

electrical apparatus, 65.1 v. 185.6; locomotive engines and other engines, 119.5 v. 141.7; machine tools, 42.1 v. 123.4.<sup>1</sup> . . .

The compensation movement, if not in every state the very compensation acts themselves, is providing a highly important form of practical education. It is giving us our first real and exact knowledge about industrial accidents in the United States. Before the era of the compensation laws there was not a single state in the country whose accident statistics were of any real value. It is, indeed, interesting to observe that the broad, general estimates of the total numbers of industrial injuries in this country which had been made in recent years are being substantially confirmed by the increasingly full and reliable returns which now are coming in. Mr. F. L. Hoffman's well-known estimate of some 25,000 killed each year and about 700,000 disabled for at least four weeks<sup>2</sup> is finding substantial verification in the reports which now are coming from the compensation commissions. The latest available returns for several of the states show total injuries and fatalities as follows:

STATE	TOTAL	FATALITIES
California (1917) . . . . .	109,988	628
Illinois (1918) . . . . .	36,432	492
Maryland (1918) . . . . .	42,570	163
Massachusetts (1917) . . . . .	174,372	481
New York (1918) . . . . .	286,871	1504
Pennsylvania (1918) . . . . .	184,844	3403
Washington (1918) . . . . .	27,306	414
West Virginia (1918) . . . . .	24,379	548
Total . . . . .	886,762	7633

When there was no better authority for such frightful figures than estimates, it was possible to doubt their truth. Many would not believe that American industry was killing three workers every hour of the year, night and day, and was wounding some millions annually; but now it is becoming more and more difficult to deny the facts. The reports of the compensation commissions are doing more than to give a terrible confirmation of early estimates. They give also much additional information as to the nature of the injuries,

<sup>1</sup> U. S. Bureau of Labor Statistics, Bulletin No. 216 (1917), p. 43.

<sup>2</sup> U. S. Bureau of Labor Statistics, Bulletin No. 155, p. 6.

their physical and social causes, and their consequences. Doubtless the present returns of most states still leave much to be desired in the way of regularity, fullness, clearness, and comparability. But a well-thought-out plan for the standardizing of accident statistics has been prepared by the International Association of Industrial Accident Boards and Commissions. And as the standard forms are more generally adopted for the return of accident reports there will accumulate a mass of statistical data which will be of the highest value in every way. These will give the country indubitable evidence of the reality and magnitude of one of our greatest industrial evils. Then we may trust that American public opinion will not tolerate any neglect of remedies. But the mass of scientific data for which we are coming into the debt of the compensation laws will do more than arouse public opinion. It will provide the only basis for sound and hopeful policies of prevention and palliation. It will do more even than that: it will help—is already helping—to humanize industry and industrial relations by showing how practicable and expedient it is for twentieth-century business to adopt in its human relations principles and methods as well considered and as highly specialized as those which long have been taken as a matter of course in other relations.

The effects of the compensation system in the promotion of safety are none the less real because the appeal to selfish and heartless employers is not made directly in the commonest form of statute but indirectly and through practices developed under the statutes. For, while the most common form of statute does lay upon the employer an obligation to make payments on account of accidental injuries suffered in his service, it also directs him to insure his liabilities, and thus limits his costs to the definite amount of his insurance premiums. Accordingly, it has been said by some that the employer's direct business inducements to make his work-places safe are diminished, not increased. For the moment this may appear to be true. But it is not true. For in connection with the state funds, which often are established as agencies of insurance, either exclusive (as in Washington, Ohio, and other states) or optional and competitive (as in New York, Pennsylvania, California, and elsewhere), provision always is made in the statutes for at least some partial adjustment of premiums to the accident rates of the insured, either individually or

by groups. And it cannot be doubted that the statutes and their provisions for insurance have been drafted in the reasonable expectation that private insurance carriers also would vary their premium charges in accordance with the same general principle.

And in actual practice one of the most interesting and gratifying developments under the compensation system in America is seen in the careful and unremitting endeavors of all insurers—state funds, insurance companies, and mutual associations alike—to work out a sound rule for making premium rates depend in part upon the employer's efforts or success in safeguarding his work-places. Both the principles of discrimination adopted and the practical measures for carrying them into effect vary. There are open questions as to the relative weights to be assigned to the accident rates actually developed in experience (experience rating) and to conformity to prescribed standards of safety (schedule rating). There are also unanswered questions as to the extent to which individual conditions and experience may be considered without departure from the sound essential principle of all insurance; that is, the principle of pooling the individual in the collective group of the insured. It is not necessary here to outline the excellent work which has been done by numbers of very capable insurance experts in their attempts to solve such problems. But it must not be forgotten that much of the best thought of the insurance companies and of the compensation commissions is devoted to the working out of plans which may combine sound insurance procedure with the utmost practicable allowances and penalties for observance and neglect of approved safety measures.

And there are still other ways, at least as important, in which compensation insurance has conduced to the safety of industrial employees. Once the insurer has contracted for his premiums, it is clear that he stands to gain the more—to save the more of the premiums for his own profit—the more he can reduce the accidents of the insured below the numbers upon which the premiums were computed. And, at the same time, he may encourage his insured to hope that a reduced accident rate will mean a reduced premium for the next policy period. Thus we find that, as a matter of the most obvious business interest, all sellers of compensation insurance seek constantly to improve their risks, by inspections, by counsels of safety, and by the preparation and urging of all manner of safety

policies and appliances. Very fortunate, indeed, it is that corporations with resources as great as those of the large insurance companies find it unmistakably good business to work for the safeguarding of industry. Nothing has done more to clear private sellers of compensation insurance from the charge of heartlessly exploiting human misfortune for their own profit than their intelligent and persistent endeavors to make work-places ever safer. Nothing can be more likely to preserve for them their present rights in a large and expanding field of enterprise. At first individually, company by company, but more recently chiefly through their specially constituted associations and bureaus, and sometimes in friendly conference with representatives of the state compensation commissions, private insurance carriers have done a most admirable work in devising and recommending plans for the safe construction, equipment, and management of factories, mines, and other work-places. Their provisions for the human element, that is, against the so-called moral hazards, are scarcely less elaborate.

Whenever, as often under the statutes, those who employ large numbers are allowed to dispense with formal insurance and to "carry their own risks," workmen's compensation tends in the simplest and most direct way to promote safety. In all such cases employers know that each injury means so much direct cost to themselves and that, therefore, it is for their own immediate business advantage to reduce accidents to the lowest possible figures. Essentially so it is also with all genuinely mutual insurance associations.

The conclusion, therefore, is fully warranted that compensation insurance, with its merit ratings, does contribute largely to the contemporary movements for industrial safety. And both insurance and the merit ratings were contemplated in the workmen's compensation legislation generally, even in the states where they were not expressly required by the statutes. Here, then, is the happiest consequence of the compensation system. It certainly is well if many millions of money have been added to the sums formerly received as indemnity and solace for the losses and sufferings entailed upon workmen's families by industrial accidents. But it is much better in every way if, as is not unlikely, some few thousands of lives are saved each year and some scores or hundreds of thousands of injuries prevented.



It must be confessed that, except as they did bring in compensation insurance and its merit ratings, the compensation laws have not done much for industrial safety. Not often have they prescribed rules or standards of safety or even conferred powers of inspection. This, however, has been because such matters have been left to distinct statutes and distinct offices. In California there was a temporary change of policy. For the revised compensation act of 1913, replacing substantially the act of 1911, was made up in considerable part of sections devoted specifically and exclusively to the direct promotion of safety in industry; and the act itself was legally designated the "Workmen's Compensation and Safety Act." But in 1917 the safety sections were entirely removed to a separate statute. Other states, as a rule, have followed the plan of separate statutes from the first. At present there are only about a dozen states which make any provision for accident prevention in their compensation acts. Doubtless there are real advantages in some measure of coördination or unification in the two lines of activity. But the present degree of separation is not as great as might appear. For in many of the states there are industrial commissions with general authority over all administration of laws affecting labor, workmen's compensation laws, factory-inspection laws, safety laws, and the rest. And it can make but trifling difference whether public regulations which a given office is to administer are found in different parts of one statute or in different statutes.

In the critically important matter of fixing compensation-insurance rates, whether for the state funds or for private insurers, the framers of the statutes usually have thought it sufficient to take account of the actually developed accident experience of industries or groups of industries. Rarely have they thought it well to sanction schedule ratings; that is, ratings based upon conformity to approved standards of safety.<sup>1</sup> The terms of typical statutes, as in Ohio, unmistakably contemplate no other principle of merit rating than such as may be derived from the accident experience of the insured. There are statutes, as in Kentucky and Virginia, which in general terms authorize "merit rating," while others authorize or direct "schedule rating," with or without a fair implication that the words

<sup>1</sup>As a matter of fact, legislatures and their draftsmen knew very little about the different principles and methods of merit rating.

are to be taken in their technical meaning. Only in a few of the states, as in Colorado from the first, in Michigan, New Jersey, Pennsylvania, and now since 1917 in Washington, is there express and definite sanction for the adjustment of premium rates with reference to physical and moral conditions in plants, as distinguished from accident rates revealed in experience. Accordingly, the state commissions, practically limiting themselves to experience ratings in their administration of the state funds, have been much less efficient than private insurers in their use of a most powerful force for the promotion of industrial safety. The provisions of the Pennsylvania statute and of recent amendments in New Jersey and Washington may indicate that this important fact is coming to be recognized in public places. If so, a change for the better may be in prospect.

But, even without large use of this efficacious means, some of the state commissions have produced gratifying results. They have conducted extensive educational campaigns; they have made inspections, examined and recommended safety devices, established safety exhibitions and museums, and widely scattered helpful printed materials. The California Industrial Accident Commission long has issued a valuable illustrated *California Safety News*, which cannot have failed to do much good. The same commission conducted a special campaign for safety in mining industries, with the apparent result that fatal accidents in California mining fell from 20 in 1916 to 10 in 1917. In 1914 the Massachusetts Industrial Accident Board carried on for three months a campaign for safety in establishments with some 55,000 employees. And a comparison of accident rates for half-year periods before and after the campaign shows a reduction of 20.8 per cent in the total number of accidents. It is by discriminating attention to experiments and reports like the two just mentioned—not by observing the broad, general movements of accident rates—that one may come to his best conclusions as to the effects of the compensation laws in making industry safer. . . .

So far, then, it would appear that the compensation system has had no appreciable direct effect upon business. Nor, in the nature of the case, can there have been any large, direct effects. The single new influence to work directly is the weight of the compensation costs as an addition to the expenses of doing business. And, on the average, these costs cannot have figured for much.

Clearly their magnitude is shown by the premiums for compensation insurance. And these, varying from a minor fraction of 1 per cent of the pay roll in most textile mills to several per cent in structural iron work, mining, and other specially dangerous operations, may perhaps be generalized at about 1 per cent, or a little more.<sup>1</sup> And such a cost, a cost of such amount and of such character, can have no great effect upon the total expenses of producing, upon necessary prices of products, or upon demands for goods.

The addition of 1 per cent to labor costs becomes an addition of about one fifth of 1 per cent to total costs when account is taken of the fact that labor, as in manufacturing, figures at about one fifth of all costs. In other industries, as in mining, labor counts for much more. But the costs of compensation, of compensation insurance, are not a net addition to the employers' business expenses. Something employers paid in former days on account of industrial accidents. The largest item was the amount paid for employers' liability insurance. But there were other items also—the small sums given occasionally in direct and gratuitous settlements of claims, the costs of litigation, and the rest. So that the immediate net increase in the costs of production or business must be much less than the present costs of compensation insurance. In fact, there have been official claims for several of the states that the new system costs employers no more than the old.<sup>2</sup> Something still further must be allowed in reduction of the fair charge against compensation. Better medical care for injured employees and larger cash benefits for them make the interruptions of their work less prolonged and less disturbing to the orderly course of the business.

When all due allowances have been made for these reactions of the compensation system, as for others which might be added,

<sup>1</sup> In Montana, where employments cannot be especially free from dangers, 1 per cent is the official estimate of the costs for the two years 1917-1918. In West Virginia, where also mining is an important industry, the general average of premiums for 1916-1917 was 1.41 per cent. In Wisconsin during 1913-1916 it was 1.33 per cent. In the exclusive state funds the premiums or assessments are lower. But the question of true costs is so much involved with other subordinate questions that it cannot be answered in a convincing manner without elaborate expositions and discussions. The variety of Wisconsin industries and the different agencies of insurance operating in that state perhaps make Wisconsin figures as instructive as any.

<sup>2</sup> Montana Industrial Accident Board, 1918-1919, pp. 28-29.

possibly there may still appear some trifling increase in the direct costs of industry. But trifling, indeed, must the increase be. And, such as it may be, it bears upon producers in nearly all branches of industry, taking the word in its narrower meaning, and in nearly all parts of the civilized world. Its true and final effects, therefore, can be ascertained only by elaborate and somewhat profound analyses and by careful examinations of industrial conditions, such as would in themselves constitute an important study in economic theory. Are modern producers' profits so high that from them can be taken these trifling net additions to costs? If not, will the producers' necessary increase of his selling prices appear in a corresponding increase in consumers' costs? If so, will demand be turned from the products of those who have to pay compensations to the products of those who do not have to pay, as from manufactured goods to agricultural products? Or will consumers find their purchasing power commensurate with the higher prices, because they receive compensation benefits, or are enabled to work and earn better, or are relieved somewhat from charges for the care of victims of industrial accidents? These and still remoter questions need not be answered now. We may rest content in a reasonable confidence that, as no disturbances because of workmen's compensation have been observed in the industry of the United States or of foreign lands, so none which can possibly come can outweigh, or even approximately balance, the business and social advantages which already have been derived from that same system.

There are other consequences of the compensation legislation already apparent. As it has been humanizing industry, so it has been humanizing judicial opinion, which in America is so powerful for social good or evil. One need not be an extremist in order to believe that the great body of our judicial reasoning about social relations has been a dry and lifeless formalism, showing little recognition of what it meant for the life and welfare of human beings. An eminent New England jurist, still living, once declared, in a decision from the bench, that the atrocious fellow-servant doctrine rested upon "considerations of right and justice."<sup>1</sup> Now such a complete disregard of the human significance of the law never is found in the compensation decisions. Rather the judges in a score of courts vie

<sup>1</sup>*Hoxie v. New York, New Haven, and Hartford R. R. Co.*, 82 Conn. 352.

with one another in praising the humane wisdom of the compensation acts and declaring their purpose of interpreting them in no narrow and technical sense, but broadly and liberally and in such manner as to get the fullest practical effect to their noble humanitarianism!

Let still other observed consequences of the compensation system be passed over now. But mention must be made, if only the briefest, of certain serious defects in the present statutes, which have developed in practical experience. It would not do to dwell only upon the merits of the American compensation system, with never a word about its defects.<sup>1</sup>

To leave the enforcement of the injured worker's rights to the law courts has been proved, in New Jersey<sup>2</sup> and elsewhere, practically to nullify the provisions of the statutes in great numbers of cases. "The administration of American justice is not impartial, the rich and poor do not stand on an equality before the law, the traditional method of providing justice has operated to close the doors of the courts to the poor, and has caused a gross denial of justice in all parts of the country to millions of persons."<sup>3</sup> Yet there remain compensation states, north, east, south, and west, which have constituted no special administrative boards. The sums paid under the acts for medical care have been proved generally to be most wisely and helpfully expended, hastening cures and thus benefiting both the injured and the employer. Yet there are but four or five states which

<sup>1</sup>For the most part the defects may be regarded as merely shortcomings, as merely preventing a full realization of the advantages which might be derived from a compensation system. But in some few respects workmen have been made positively worse off by the compensation acts. As men who have been disabled or maimed are more than ordinarily liable to accident, such appear to find their opportunities of employment diminished somewhat (U.S. Bureau of Labor Statistics, *Monthly Labor Review*, Vol. IX, No. 1 (1919), pp. 206-207). More important is the fact that the compensation laws, making recoveries under the employers' liability law practically impossible, shut off from any relief the workers whose injuries are not provided for by way of compensation awards; that is, broadly speaking, those whose disabilities do not continue beyond the prescribed waiting period—a week or ten days, more or less. But, since most of these many thousands would have been unable to secure relief under the liability system, the evil is not enormous. But it is real.

<sup>2</sup>"Three Years under the New Jersey Workmen's Compensation Law," report by the American Association for Labor Legislation.

<sup>3</sup>"Justice and the Poor," Carnegie Foundation for the Advancement of Teaching, *Bulletin* 13, p. 8.

do not limit the extent of provision for curative treatments, by fixing a maximum either of amount or of time. The waiting period, during which no benefits accrue, still is two weeks in some states and ten days in many. Yet experience shows that not far from three fourths of all disabilities cease within two weeks. In Oregon in 1915-1917, when there was no waiting period, it was found that a waiting period of one week would have cut off 35.38 per cent of the injured from their awards, while two weeks would have cut off 62 per cent. While to many prosperous persons it may appear a small matter to have income suspended for two weeks or less, it is by no means a small matter to the hundreds of thousands who have the experience each year in this country because they have been injured while at work. Failure of the employer to insure his liabilities often makes it impossible for the injured to secure their promised benefits. Yet there still are several states which make no requirement of insurance. The limitation of awards to those whose injuries have been of accidental origin has raised many perplexing questions as to what is an accident and has cut off from compensation a great many victims of industrial diseases and of exposures of one sort and another.

A defect deserving of special attention is the inadequacy of the schedules of awards. About these there is much misunderstanding. The amounts of compensation, in nearly all cases, are stated as such or such a percentage of current earnings, as less than 50 per cent in several states and under certain conditions, 50 per cent in about half of the states, 55 in two or three, 60 in some fifteen, 65 in two or three, and  $66\frac{2}{3}$  in the rest. But these figures exaggerate the benefits actually paid, being maxima which cannot be reached under many common conditions of earnings, dependence, and the like. Moreover, they are qualified in most of the states by the provisions that, no matter how high the actual earnings, the awards may not be above some maximum, as \$12 a week, more or less, and that, no matter how long disability may continue, payments must cease after a while. The Minnesota commissioner of labor estimates that in his state, while the nominal rate was 60 per cent, the awards in cases of temporary disability were but 38 per cent of the direct wage loss in 1916-1917 and but 48 per cent in 1917-1918. It is a cruel mockery to present as half pay, or two thirds, a series of payments which may cease while yet the injured person is to live through a

long period of disability. It is scarcely less cruel to modify a nominal half or two thirds of pay by a fixed maximum of \$15, \$12, \$10, or \$8. The highly paid railway employees have understood this all the time. And nowadays it is being realized by many others. To what extent present schedules of awards might be raised need not be asked here. Most of them were fixed before the war period and its enhanced costs of living; and the present height of prices has forced a number of increases in the schedules,<sup>1</sup> but not enough. They still are generally too low. It is the amount actually paid that counts. Be it remembered that actual awards for fatal injuries average from \$2500 to \$3000, while the terms of the statutes commonly put into readers' minds thoughts of \$5000 or more.

Much the greatest defect of the American compensation statutes is their lack of comprehensiveness. In a recent issue of the *Monthly Labor Review*, Mr. Carl Hookstadt estimated that in the so-called compensation states there were not less than 7,400,000 employees who were not covered at all by the statutes. Some of these, a million and a quarter of them, are in interstate commerce, where there are special but not insuperable difficulties in providing coverage. But the greater number, more than six millions, have been deliberately left out or excluded by state legislatures. The reasons are well known. There are strange beliefs as to the needlessness of compensations in occupations which, with or without good reasons, are counted as not hazardous. There are rather discreditable deferences to the prejudices of such classes as the farmers. And there are other minor reasons. But the fact remains that nearly a third of the employees in the so-called compensation states are in no wise affected by the statutes. An estimate of the United States Bureau of Labor Statistics indicates that nine of the compensation states cover less than half of their employees and that only eighteen cover as many as two thirds. And these estimates assume that in the states with optional acts there have been no rejections by employers.

The net result of all this is that the present American compensation system is much narrower in its application than we in our optimism might suppose. In Kansas, with her population of more than a million and a half, there were in 1914 only 806 compensation

<sup>1</sup> U. S. Bureau of Labor Statistics, *Monthly Labor Review*, Vol. IX, No. 4 (1919), p. 245.

awards of all sorts; while in 1917-1918, after the waiting period had been reduced from two weeks to one, cash awards were made only at the rate of 1916 a year. In New Hampshire, with a population of some 450,000, there were in 1914 but 404 awards; and the latest report of the Bureau of Labor makes no mention of compensation awards. In Nebraska, with nearly a million and a half of people, there were in 1915 but 605 awards. In the same state, in the calendar year 1917, but \$67,028.73 was paid for all cash benefits, and in the first ten months of 1918 but \$65,362.74. Can such states fairly be counted as having compensation laws? But even in the states which make the best showings only a small minority of the injuries suffered are followed by compensation awards. There are few states in which the figure is as high as 20 per cent. In California, where the compensation law had been in operation five or six years and had been administered by a capable and alert commission, there were in 1917 only 14,313 awards for temporary disability, although there were 107,420 temporary disabilities reported.

The sum of it all is that the American compensation laws have proved fairly their beneficence but cannot be supposed to have attained their final forms. Either a superficial observation of the contemporary course of legislation or a closer examination of the underlying conditions which appear to direct it will yield reasons for believing that the compensation system will be extended and that its provisions will be made more liberal than they are at present.

WILLARD C. FISHER

NEW YORK UNIVERSITY



### III

## COMPULSORY HEALTH INSURANCE IN GREAT BRITAIN<sup>1</sup>

THE right of a government to coerce its citizens into insuring for those contingencies against which experience has proved that they are unable to protect themselves has been asserted not alone by Great Britain's Prussian enemy and eight other European nations but by democratic and individualistic England herself. The presentation of a bill for compulsory health insurance to the British Parliament in 1911 was the more remarkable since 5,500,000 of the more thrifty British workmen were then voluntarily insured against sickness through friendly societies and trade-unions. This voluntary insurance, however, did not provide for those who most needed it—the less thrifty, the more poorly paid, those to whom sickness was a greater disaster—who are now included within the compulsory system. To these 8,000,000 workers the only assured protection was that offered by the charitable societies and the poor law, with its hated stigma of "pauper." To the British this provision seemed wholly insufficient, and under the commanding leadership of Lloyd George a bill for compulsory health insurance embracing all workers was introduced into Parliament in May of 1911. It was passed the following December, came into operation in July of 1912, and six months later benefits became payable.

Included within this "national health insurance," as it is termed in Great Britain, are all persons between sixteen and seventy employed for remuneration under any form of contract, if engaged in manual labor or if the rate of their annual earnings is less than \$800.<sup>2</sup> Within this classification numerically unimportant exemptions of individuals or the exclusion of occupations may be granted by the commissioners for reasons established by the act. Untouched by its compulsory provisions are all those working independently—the

<sup>1</sup>From *American Labor Legislation Review*, Vol. VI (1916), pp. 127-137.

<sup>2</sup>The income limit has been raised to \$1250 by the amending act of 1919.

small shopkeeper, the village carpenter or the cobbler, all of whom have no employer and whose insurance would be difficult to enforce. Those employed within the meaning of the act and insured during the first year, 1912, numbered 13,472,000, or nearly 30 per cent of the total population.

The benefits to which these 13,472,000 workers are entitled include medical care, sanatorium treatment if attacked by tuberculosis, a cash benefit at the time of childbirth, a weekly payment during twenty-six weeks of illness in a year, and a smaller weekly sum during prolonged disability.

The medical benefit guaranteed to each person insured for half a year consists of medical treatment, medicines, and specified appliances. This benefit is administered by insurance committees, which are appointed for definite areas to represent insured persons, doctors, and the local government of the administrative district. These committees arrange for the medical care of the insured workmen in accordance with regulations of the central administrative body, the insurance commission, and then draw up a list or "panel" of physicians who have agreed to the terms. These arrangements must observe two fundamental conditions: first, the right of every duly qualified physician who wishes to serve upon the panel to be placed upon it, provided he is not proved injurious to the service; and, second, the right of each insured person to select his physician from among those on the panel. For the remuneration of physicians a minimum of \$1.68 and a maximum of \$1.80 is annually set aside for the medical care of each insured person, regardless of the amount of medical attention he may require. This sum, exclusive of the cost of drugs and appliances, is nearly twice the average physician's income before the insurance act, estimated upon the basis of per capita of the population. Under these conditions about 20,000 doctors in England, Scotland, and Wales have undertaken insurance practice. This in various districts represents from 70 to 100 per cent of the medical profession practicing among the industrial population.

Sanatorium benefit for the tuberculous insured is provided through the insurance committees, which make arrangements for sanatorium treatment with the local authorities.

A weekly sick benefit for a maximum of twenty-six weeks in a year is granted to each insured person not over seventy years of age

who has paid twenty-six contributions, and who produces a certificate from his panel doctor that he is incapable of work. Ten shillings (\$2.40) a week for men and seven shillings sixpence (\$1.80) a week for women is the legally established benefit paid by each society approved under the act.

A disablement benefit of five shillings (\$1.20) a week is paid to both men and women, insured for two years, when the illness extends beyond the twenty-six weeks covered by sickness benefit. This payment continues for the entire duration of the incapacity and ceases only when the insured reaches seventy, when an old-age pension of equal amount is due him under the old-age pensions act.

The maternity benefit of \$7.20 (exclusive of medical attendance) provided for the wife of each insured man as well as for each insured woman is one of the most popular and the most easily administered features. This payment, made solely to help defray the expenses of confinement without regard to incapacity either before or after, is to be distinguished from sickness benefit. Indeed, the receipt of a maternity benefit debars the insured mother from the right to receive sickness benefit for the four weeks immediately following confinement.

The cost of these five benefits involving a large total annual expenditure is divided among the worker, the employer, and the state. Each insured man pays 8 cents weekly, an insured woman 6 cents, the employer 6 cents weekly for each employee, man or woman, while the state contributes an additional 4 cents. With the exception of the low-paid worker earning less than at the rate of 60 cents a day, for whom the employer and the state pay a larger proportion of the contribution, this rate is uniform for all age or wage groups and for all occupations, regardless of the sickness hazard of the industry.

This flat-rate contribution, a distinguishing feature of the British system, is based upon the cost of providing a person of sixteen with all the benefits until seventy, and with medical and sanatorium benefits throughout life. It allows for the heavier claims of later life by charging the person of sixteen more than his benefits at that age actually cost. By this method a reserve is accumulated from which the claims of middle life may be met. To estimate this cost the sickness tables of the Manchester Unity—one of the old and well-managed friendly societies—were used after they had been adjusted

to allow for a different distribution of age, occupation, and civil status among the compulsorily insured population. In this calculation it was assumed that each of the approved societies carrying insurance would have its fair proportion of the average distribution of risks, and that no one society would depart radically from the average in age distribution, in occupational hazards represented, or in proportion of married and unmarried members. The actuaries, however, were unable to find any suitable table for women, and according to their own admission they used the adjusted Manchester Unity table "without modification" to measure the probable rates of sickness among women. Upon these assumptions the attempt was made to determine once for all the liabilities of this gigantic new system of national insurance and to fix a uniform contribution which would be sufficient for future expenses among all societies.

A uniform contribution for the various ages entering insurance at the inauguration of the system was possible only by crediting to those over sixteen the amount which, had they been insured from the age of sixteen, would have accumulated to their credit to pay for the heavier claims of old age. Accordingly a "reserve value" was credited to each person over sixteen included within the act, making an aggregate total of \$432,000,000. This huge sum at first appeared only as a book credit. To convert this into cash, and at the same time to provide interest on the capital sum, nearly one fifth<sup>1</sup> of each week's contribution is diverted to writing down the reserves, a process which it was originally estimated would require eighteen to twenty years. When the reserves have been converted into cash, the released one fifth may be used for increasing the benefits established in the present act.

The financial side of the act centers around the approved societies which are the real carriers of insurance, paying cash benefits to their members and reimbursing the insurance committees for expenditures connected with medical and sanatorium benefits.

The approved societies, of which there are 23,500 independent societies, lodges, and courts, are in some cases the old friendly

<sup>1</sup>The amount set aside from each weekly contribution has been reduced by the amending act of 1918. The sums thus released have been used to increase the money available for the payment of cash sickness benefit for women and to create various special funds established by the amending act. See footnotes 1 and 2, p. 50.

societies approved for the purposes of the act, some have been organized by trade-unions, and still others are special societies modeled after the friendly societies and organized to administer national health insurance. Following the prerogative of the friendly society, each insured person is given an unrestricted right to select his society, and each society may reject an applicant on any ground save that of age. Thus it may limit its membership to those who are members of a trade-union, to those who are engaged in a particular occupation, or to total abstainers, etc. The great discretionary power given to the societies to administer their own affairs is a keynote of the British system. In theory each society of over 5000 members is financially independent, its solvency depending upon its own successful administration. If the expenditure is in excess of the actuarial expectancy, a deficiency will result which the society must make good, either through a levy upon its members or by a reduction in its benefits. Temporary provisions for persons who might be refused and for those not desiring to join a society were supplied by the "deposit contributors' fund," under the control of the insurance commissioners.

A segregation of the insured persons by trade has in some cases resulted from the freedom of the insured to choose his society and from restrictions placed upon membership by the societies themselves. In the words of the interim report of the departmental committee on approved society finance and administration, "Insured persons were allowed, were, indeed, urged, to segregate themselves into societies that seemed to promise satisfactory results, and the prospect was held out to them that they would derive a direct benefit from the wisdom of the choice of a society. In other words, Parliament contemplated in one fundamental aspect a departure from the fundamental working of a flat-rate system." This trade segregation, whether a favorable one, as in the case of bank clerks and domestic servants, or an unfavorable one, as in the case of cotton-mill operatives, miners, and boot and shoe workers, carried with it the isolation of trade risk far below or far above the average occupational hazard for the entire insured population for which the flat-rate contribution was calculated. The uniform contribution calculated for the average is frequently insufficient for the worse risks, and a society may therefore be threatened with a deficiency, since

each is financially independent and is unable to benefit from the surplus of another having a more favorable selection of members. The deficiency from this cause actually threatening some societies has proved a serious matter to two departmental committees. The recommendations of both were the same; namely, that a portion of the reserve fund be set aside to form a "special-risks fund" from which societies having an unfavorable selection of lives might recoup themselves. This assistance to individual societies is necessary even though the sickness benefits for men, taken as a whole, are within the actuarial expectation.<sup>1</sup>

Moreover, a variation from the normal distribution of women has presented grave financial questions to other societies. The sickness rates for women, it has been pointed out, were assumed, in the absence of other evidence, to be the same as those for men. Experience has shown that sickness among single women is in excess of the expected rate, while that of married women is even more excessive. This means that the women are now receiving more than their contributions entitle them to. To remedy the situation contributions should be increased or the benefits reduced. This fundamental remedy has been shunned by two departmental committees in succession, and the same solution has been proposed by both,—that of diverting part of the reserve funds to supply the immediate needs. To meet the more numerous claims of married women, due in part to the demands for sickness benefit during pregnancy, unforeseen by the actuaries, still a third invasion upon the reserve funds, coupled with a parliamentary grant, is contemplated by both committees.<sup>2</sup>

<sup>1</sup> The amending act of 1918 has met the problem of unequal-sickness experience due to unfavorable selection by creating a contingencies fund for each society and a central fund. The contingencies fund, wholly derived from sums diverted from the sums originally set aside for the reserves, is to be used by individual societies in meeting deficiencies which may be disclosed upon actuarial examination. The central fund, derived in part from sums originally set aside for creating reserves and in part from parliamentary grants, is to be used to meet deficiencies in societies—deficiencies which are caused by sickness arising from occupational hazard or by other causes over which the society has no control.

<sup>2</sup> The amending act of 1918 has provided for the excess sickness among women by increasing by  $\frac{1}{3}d.$  the weekly amount available for paying benefits to women. This sum is obtained by subtracting this  $\frac{1}{3}d.$  from the amounts originally set aside for writing down the reserves. The amending act also

In contrast to this segregation, a widely scattered membership without geographical or trade grouping may result from the same freedom in selecting a society. This situation, though unaccompanied by the same financial dangers, has its grave disadvantages. For example, because the members of a community or industry are insured in hundreds or even thousands of societies with other persons, it is difficult to discover an excessive amount of sickness for that group. Without this knowledge it is of course more difficult to take preventive steps. Moreover, a membership distributed throughout the entire kingdom has materially hindered the development of anything like an effective system of sick visiting; it is even a question with one society actually insuring millions of workers whether a complete system, reaching out to the tiny isolated villages, will pay for itself. Without such a system the ratio of unnecessary claims will be somewhat higher than when they are closely watched, as they can be with a concentrated membership.

The conclusion to be drawn from this British experience with a flat-rate contribution and with free choice of carriers is twofold. First, the two when dependent on each other are undesirable. A flat-rate contribution is clearly impossible when there is unrestricted freedom in the selection of the society, because of the segregation of special risks which may and does result. Secondly, even if the flat rate is not combined with choice of approved society and if all possibility of segregation of risks is eliminated by prescribing the carrier, a flat rate is still undesirable. First, it is impossible to foretell accurately the liabilities even upon the most accurately prepared sickness data. The error in the sickness rates of women made by the British actuaries is an example. Secondly, the contribution is regarded as permanent by the contributors, and any attempt to change it is resisted. Hence, as in Great Britain, initial mistakes in the financial estimates must be rectified from some other source. The same opposition to any increase in the contributions has been manifested when the purpose has been to increase the facilities of the insurance system. As a result, such additional expenditures have been met

provides for the higher sickness rate among married women by establishing the women's equalization fund derived from parliamentary grants. This fund is to be apportioned among the approved societies with reference to the number of married women members.

by parliamentary grants when as a matter of justice the increased income should have been derived from the insurance payments. The system of free choice of carrier, even if unaccompanied by a flat-rate contribution, is in itself undesirable. The same segregation of membership might well result, involving a higher contribution to cover the experience of individual funds. Where many employees in a plant were insured in as many societies there would be dismay upon the part of the wage clerk in setting aside the correct contribution for each man. This mechanical difficulty might well be an incentive for the employer to maintain his own establishment fund. Moreover, the difference in the weekly contribution, assuming it made a difference to the employer as well, might well lead him to discriminate in favor of the most economical fund. Such a development would render freedom of choice chimerical. Furthermore, the system as a whole would be crippled if it were unable to ascertain in which trades and localities the sickness rates were highest and if, for lack of this knowledge, it were unable to call attention to the excessive sickness and to take active steps for its prevention.

The financial difficulties facing the British system, it is important to bear in mind, are due to the attempt to forecast once for all time the cost of the insurance, in which the government actuaries failed, and, secondly, to the ironclad nature of the contributions and benefits which precludes every effort to obtain additional income from this source. These are defects which the flexible average premium system adopted by the German act and in successful operation now for more than a quarter of a century has been able to avoid.

The administration, aside from that of the approved societies which has just been considered, rests with the insurance committees and the central insurance commissioners. The administration of medical and sanatorium benefits, although duties naturally falling upon the approved societies, have been farmed out to the insurance committees because of the greater ease in administration when the membership is localized. The insurance committees—which require duplicate records, increase the staff of workers, and thus add to the cost of administration—are a cumbersome effort to provide for local administration, the principle of which has been violated by the present organization of the approved societies.

The central administration is intrusted to four commissions, one



for each of the four countries England, Ireland, Scotland, and Wales, and a joint committee which coördinates their activities.<sup>1</sup> It is these five bodies, jointly referred to as the commission, which make the extensive regulations for the administration of the act, and which supervise the approved societies and insurance committees, endeavoring as far as possible to make the practices uniform throughout the kingdom. Here too there is unnecessary duplication in administrative force, necessitated by the strong feeling for "home rule," which is not confined to Ireland alone.

Notwithstanding, however, the unfortunate systems of finance and of administration which have been adopted, the beneficial effects of the act are quite evident. During the first year of benefits (January, 1913-January, 1914) 3,600,000 persons are calculated to have had sick benefit, or about 25 per cent of those insured, an experience which roughly corresponds with the financial estimates. This has involved an expenditure of \$30,000,000 for the entire kingdom. The disablement benefit, which really covers permanent invalidity, was expected to involve an expenditure of \$9,700,000 in 1915, thus increasing by one third the amount spent in sickness benefit. Its financial success, for which there were many fears before it came into operation in July of 1914, is revealed in the recent interim report of the departmental committee on approved society finance and administration. The committee states that during the first eighteen months the expenditure was within the actuarial expectation for that period, but that in the future it is possible that the disablement benefit for women, and especially for married women, may involve a heavier charge than originally anticipated. The combined effect of the medical care and the provision of cash benefit is that many who previously had dragged along without medical advice, forcing themselves day by day to work in spite of illness, have now for the first time had proper attention. Physicians have said, "I thought I knew how much illness there was in my neighborhood, but I had no conception of the amount that existed until I was brought in contact with it through the act. . . . I had no idea that it existed

<sup>1</sup>The Ministry of Health Bill provides that the work conducted by the insurance commissions shall be under this new department, which will also direct the health activities previously conducted by other government bodies, such as the local government board.

and was going unrelieved, and that people were dragging along with such illness." An official investigating commission states that "already there are indications that as a result of the rest obtained under the act a better condition of health has in certain cases been attained than has been experienced for many years."

The maternity benefit, it is calculated, went each week of the first year to 17,000 mothers, and throughout that year 887,000 received maternity benefit, involving a total expenditure of \$7,000,000. The results of the cash maternity benefit were soon discernible in the rapid decrease in the mothers' seeking assistance from the out-patient departments of hospitals and from other maternity charities, and in their willingness to pay for what previously had been given to them, sometimes engaging a member of the hospital staff, but more frequently resorting to the midwife, who often could be prevailed upon to give needed help with household duties. This increased use of the midwife, trained and supervised though she be as in England, creates a new problem, which can be solved only by providing the maternity benefit in much the same way as medical assistance is now provided for insured persons.

The effect has also been felt by poor-law officials and charity workers. The poor law has been relieved of a large number of calls for medical care from the parish doctor, for midwifery assistance, and for outdoor relief in time of sickness. In the towns of Bristol and Manchester the diminution in pauperism in 1913 as compared with 1912 is attributed to the insurance act; in the latter city the number of payments of outdoor relief decreased by 30 per cent, while the actual amount diminished 25 per cent. Among the Liverpool dock laborers it is estimated that in half the cases which received sick benefit the home would have been broken up and relief sought in the workhouse had it not been for the benefits of the insurance act. Charity workers too have found that the calls for financial relief have diminished both in number and in the amount of assistance required. On the other hand, some of the local poor-law officials fear that the enlarged use of doctors brought about by the insurance act, which is revealing a larger number needing hospital care, may increase the inmates of the poor-law infirmaries. This, of course, is significant of the higher standard of medical care for the workingman resulting from the insurance provisions. Sanatorium

benefit, notwithstanding petty jealousies between rival local boards, fostered by the administrative system and the inadequate funds at the disposal of the insurance committees for their share of the work, was received by no fewer than 44,000 insured workers in the first eighteen months' operation of the act. Of this number more than half were placed in sanatoria, others were treated in dispensaries, and still others were cared for in their homes by the panel doctor, under the guidance of the tuberculosis officer. To assist in home treatment 1200 shelters for out-of-door sleeping were available, and in other cases milk and eggs were supplied to patients in their homes.

Moreover, the whole antituberculosis movement has been strengthened. To provide the additional sanatoria necessary for the treatment of the insured and their dependents provided for in the act, Parliament in 1911 made a grant of \$7,200,000 to defray part of the expense of sanatoria, whether erected for insured or noninsured. Under this generous provision plans for 3000 new beds had been made within the first twenty months and grants to the extent of \$1,287,000 had been either made or promised. Following the recommendations of the famous Waldorf Astor committee, that sanatorium benefit should be available not only to dependents of the insured but to the whole population, the government announced in July of 1912 that it was willing to bear one half of the expense incurred by the local authorities in treating noninsured persons as well as the dependents of insured workers. For this purpose Parliament granted \$1,464,000 and \$2,300,000 for the budget years of 1914 and 1915 respectively. The provisions which have thus far been made are but the beginning of an effective crusade against tuberculosis, instigated by the insurance act and originally restricted to the insured and their families but later extended to the entire population.

If even a clumsily conceived plan of health insurance can improve health, decrease pauperism, and forge an effective weapon against tuberculosis, are not we Americans challenged to devise a system which will function more perfectly in our war against poverty and disease?

OLGA S. HALSEY

## IV

### THE BRITISH NATIONAL SYSTEM OF UNEMPLOYMENT INSURANCE—ITS OPERATION AND EFFECTS<sup>1</sup>

**C**OMPULSORY national unemployment insurance, the second great effort of Great Britain to treat unemployment as an industrial problem, followed closely upon the inauguration of the labor exchanges. Although this provision was planned to accompany the measure for labor exchanges, the project was withheld until the plan might be perfected and until the exchanges might become an efficient adjunct. When a bill was finally introduced into Parliament it appeared as Part II of the National Insurance Act of 1911. This came into operation in July, 1912, as far as contributions were concerned, but it was not until six months later, in January, 1913, that benefits were payable. Amendments affecting details, traceable in part to the war, were passed in 1914, 1915, and 1916.

The act aims to cover involuntary unemployment in a limited number of occupations through compulsory insurance, to which employers, the workers, and the state contribute. The compulsory basis was adopted as an essential condition for the elimination of unfavorable selection of risks against the fund and to secure the insurance of those who could not be reached through voluntary provision. The compulsory feature embraces workmen of sixteen and over, employed at manual labor under a contract of service in the following trades: building, construction work (such as railroads, docks, harbors, embankments, etc.), shipbuilding, mechanical engineering (including the manufacture of ordnance and firearms), iron founding, construction of vehicles, and sawmilling when carried on in connection with an insured trade or of a kind usually carried on in connection with an insured trade.

<sup>1</sup>From Proceedings of the Conference on Social Insurance, 1916. U.S. Bureau of Labor Statistics, Bulletin No. 212, pp. 874-886.

The workmen thus insured numbered 2,282,324 in January, 1914, when the act had been in operation one and a half years. The distribution of these workmen among the various trades is shown in the accompanying table.

DISTRIBUTION OF WORKMEN AMONG THE INSURED TRADES, AS SHOWN BY THE NUMBER OF UNEMPLOYMENT BOOKS ISSUED TO WORKERS, JULY, 1912, TO JULY, 1914

INSURED TRADE	NUMBER OF UNEMPLOYMENT BOOKS ISSUED TO WORKERS, JULY, 1912, TO JANUARY, 1914	PER CENT OF TOTAL INSURED
Building . . . . .	775,755	34.0
Construction of docks, railroads, canals, etc. . . . .	161,168	7.0
Shipbuilding . . . . .	260,820	11.4
Mechanical engineering . . . . .	804,527	35.3
Construction of vehicles . . . . .	204,672	9.0
Sawmilling (of a kind commonly carried on in an insured trade) . . . . .	11,819	.5
Other industries (insured trades which occur in connection with other industries, and where the non-insured industry is main business of the employer)	63,563	2.8
Total . . . . .	2,282,324	100.0

An analysis of the insured workers indicates that 64 per cent were skilled, 36 per cent unskilled, and approximately 25 per cent union men. The insured include about 10,000 women and 110,000 minors between sixteen and eighteen years of age.

Exemptions within this group may be made by the Board of Trade on the ground that the occupations usually are carried on independently of an insured trade or that they are common to both insured and uninsured trades. During the first year three such orders were issued. Those in the permanent service of the Crown are also excluded.

Determinations as to whether men are engaged in an insured trade are made by the umpire appointed by the Crown. All decisions rest upon the provision of the act that the determining factor shall be the nature of the work and not the business of the employer. On

this basis flagmen and lookout men employed by a railway in connection with construction are not considered as engaged in an insured occupation. The demarcation of insured trades on this principle has proved a technical problem requiring during the first year 1268 published decisions and 10,000 others given in correspondence. Notwithstanding, the Board of Trade considers demarcation practicable.

The application of insurance to specified occupations only was due to the dictates of prudence that the new experiment be confined to those trades for which there was the greatest amount of data regarding unemployment. By a happy coincidence these trades are those in which the fluctuations of unemployment are most severe and where, therefore, there is the greatest need of protection.

From the outset it was realized that it might prove desirable to extend the provisions to other trades, and accordingly power was given the Board of Trade to include other occupations, provided that it would not increase the parliamentary contribution by more than £1,000,000 (\$4,866,500) annually during each of the three years following. Resolutions in favor of the universal application of the act were passed by the Labor Party at its conference in February, 1914, while the pressure of the demand from all sides, during the spring of 1914, was felt by the president of the Board of Trade. Preparation for extension by a special order was made in regulations issued in May, 1914. Further progress, however, was prevented by the war, until the exceptional development of war industries forcibly called attention to the necessity of provision for those whom peace and the attending dislocation of trade would throw out of work.

The cost of insurance is divided equally between the employer and the worker, each contributing at the uniform weekly rate of  $2\frac{1}{2}d.$  (5.08 cents), while the state contributes one third of this total, or  $1\frac{2}{3}d.$  (3.38 cents) per week. In the case of boys under eighteen the combined contribution of employer and worker is but  $2d.$  (4.06 cents) weekly. Men employed for less than one week pay a reduced contribution of  $1d.$  (2.03 cents) for employment of one day,  $2d.$  (4.06 cents) for two days, and the usual  $2\frac{1}{2}d.$  (5.08 cents) for more than two days' engagement. On this basis contributions for six days of casual employment cost employer and workman  $6d.$  (12.17 cents) each, as against the normal weekly rate of  $2\frac{1}{2}d.$  (5.08 cents). The greater expenses for casual labor may be avoided by engaging

laborers through the exchange and by making arrangements whereby the exchange pays the contribution. Under these conditions six days' work of six different men are reckoned as one week's job for one man, and the six-penny contribution is reduced to  $2\frac{1}{2}d.$  (5.08 cents). Advantage of this section was taken by the employers of 95,000 casual laborers during the first year of operation. The combined contributions of workers and employers accumulated a fund of £1,622,000 (\$7,893,463) during the first year, which was increased by the parliamentary contribution of £378,000 (\$1,839,537). The income of the second year was £1,802,000 (\$8,769,433) from employers and workers and £602,000 (\$2,929,633) from Parliament. From this fund, controlled by the Board of Trade, the benefits are paid and sums laid away for reserve with which to meet the demands of years of exceptional unemployment.

The contributory basis was considered essential in order to secure the interest of employers and workmen in its financial security. Underlying this practical reason is the assumption that if industry demands a reserve of labor it should help support it through the lean years. The contribution of the workman would seem justified because it is he who benefits. The uniform contribution was necessarily adopted because of the lack of actual data upon which to grade payments in proportion to the hazard of each industry, the age, or the wage of each employee. Statistics indicated, however, that there was a variation in the incidence and the duration of unemployment between different branches of the insured trades, a variation which it was planned to meet by granting a weekly benefit of 7s. (\$1.70) in the engineering trade and of 6s. (\$1.46) in the building group. This plan did not meet approval, and instead a uniform benefit of 7s. (\$1.70) a week for all trades was adopted.

A modification of the flat rate was provided for the employer of regular workmen, for whom a refund of one third of the contributions was made for each man employed continuously for one year and for whom at least 45 contributions had been paid. Under this arrangement, up to March, 1914, an average refund of 3s. 6d. (85.17 cents) had been made for each of 574,000 workers, or one fourth of the insured. Simplifications were introduced by the amending act of 1914, which stipulated that payment of 45 contributions was sufficient to entitle the employer to a refund of 3s. (73 cents) for each workman

so employed. A similar refund is made to the employee when he has reached sixty, if he has made 500 contributions to the fund. He then receives the difference between the amount he has contributed and that received in benefits, together with compound interest at the rate of  $2\frac{1}{2}$  per cent a year. This arrangement, which turns insurance into a savings fund for the old age of those seldom out of a job, has been an important factor in decreasing the hostility of the better workmen, who otherwise might feel that the act held nothing for them.

The possibility that contributions would not be sufficient to meet the liabilities imposed by the act was faced from the outset. Provision for temporary advances, not exceeding a total of £3,000,000 (\$14,599,500), from the treasury was made in the original act, with the proviso that if it should appear that the fund was insolvent the treasury might direct the Board of Trade to alter the rates of contributions or the scale of benefits. After the act has been in operation seven years the Board of Trade may revise the rates, adjusting them according to the amount of unemployment in each trade, provided, however, that the contributions of employer and worker shall not be increased by more than 1*d.* (2.03 cents) each and that the shares of employer and employee remain equal.

The enforcement of the contributions is undertaken by inspectors of the Board of Trade, who see that the employers duly pay their own and employees' contributions by means of stamps, representing the combined contributions, placed in the workers' unemployment books. These books are obtained from the labor exchanges, are left with the employers for stamping during periods of employment, are returned to the workers on leaving positions, and are then deposited by them at the exchanges when they claim benefits. It is the employer who is liable for contributions, but the workman becomes liable if he knowingly allows his employer to avoid payment. Prosecutions of employers numbered twenty-four during the first year, ending July, 1913, and convictions were secured in all but one case. Twenty-two cases dealt with the employer's failure to pay the necessary contribution and one with an attempt to deduct the contribution from the employee's wage. One workman was fined for refusing to apply for an unemployment book.

The payment of the weekly cash benefit of 7*s.* (\$1.70) to adult unemployed workmen began in January, 1913, after contributions had



been payable for six months. Benefit is not paid during the first week of unemployment, is limited to fifteen weeks during the insurance year, and is paid only in the proportion of one week's benefit for every five weeks' contributions. In the case of minors, those under seventeen receive no benefits and those between seventeen and eighteen receive half the benefits of an adult.

All claims for benefit must be lodged at the local labor exchange, where the worker deposits his unemployment book and where he is placed automatically upon the list of those looking for work. The claimant must then prove his unemployment by signing a register at the exchange each day within working hours, or, if he is a union man, he may sign the union "vacant" book kept at the union offices or at the exchange. As an alternative he may be given a card which he carries with him and which he may have stamped by any exchange in the city as he searches for work. The labor-exchange officials prefer daily signing at the exchange, because they are able to place more easily those with whom they have frequent contact.

During the first twelve months of benefit (January, 1913, to January, 1914) a total of 1,144,213 claims to benefit, or a weekly average of 22,000, were made. In the early days of the war the weekly average increased to 45,000 for August and 33,000 for September, 1914. Since the first dislocation of industry the weekly quota has steadily declined, so that for March, 1915, the weekly average was 8229; for March, 1916, 3535; and for August, 1916, 1920. This decline is reflected in the total number of claims shown in the following table for 1913, 1914, 1915, 1916:

#### NUMBERS OF CLAIMS FOR UNEMPLOYMENT BENEFIT

1913 . . . . .	1,144,213
1914 . . . . .	1,220,359
1915 . . . . .	380,710
1916 (10 months) . . . . .	122,902

These claims involved an expenditure of £497,725 (\$2,422,178.71) for 1913, £542,499 (\$2,640,071.38) for 1914, £132,349 (\$644,076.41) for 1915, and £39,483 (\$192,144.02) for the first ten months of 1916. Here, too, the effect of the diminished unemployment has made itself distinctly felt.

Payment is made only after it has been ascertained that the statutory qualifications for benefits have been fulfilled. During the first benefit year qualifying conditions threw out 102,000 claims, or 9 per cent of the total.

The first qualification for benefit under the act of 1911 was employment in an insured trade for twenty-six weeks during the past five years. Proof of this was especially difficult for nonunion men, and although rigid proof was not demanded, the lack of acceptable evidence caused 36 per cent of the disallowances during the first benefit year. The amending act of 1914 remedied this difficulty, of which unionists complained, by reducing the requirement to the payment of ten contributions. The second qualification is the inability of those capable of work to obtain suitable employment. The determination of what is suitable work is one of the nice questions which demand a knowledge and a full understanding of the conditions of work which a man is justified in refusing. The fundamentals of the decision are laid down in the act; namely, that a man shall not be considered to have refused suitable work if he has refused a job vacant because of a strike, or, secondly, if in his own neighborhood the wages and the conditions of work are less favorable than those which he has habitually obtained, or, thirdly, if the wages and working conditions offered him in another district are not those generally observed in that area. This provision, which depends wholly upon its interpretation, is, on the whole, being carried through in the spirit of the law, according to trade-union critics. The accepted standard of wages in districts which are well organized is the union rate, while in others wages paid by the better firms have become the criterion.

Men who have fulfilled these conditions must be without work for a week, for which no benefit is paid, before they are entitled to benefit. This so-called waiting week covered 29 per cent of the unemployment recorded within the first six months of benefits, even though this week for which no benefit is paid is credited as the waiting period for subsequent unemployment occurring within six weeks.

Since the act aims to cover only involuntary unemployment, it disqualifies from benefit men who are out of work because of a trade dispute at the factory at which they are employed, those who have

been discharged for misconduct, and finally those who voluntarily leave a position without just cause. In this instance disqualification is limited to a six weeks' period after leaving employment. To ascertain these facts a form is sent to the last employer, who is asked if the applicant lost his job through any circumstances which should disqualify. If no reply is received the local officer is compelled to assume that the claim is valid, unless suspicious circumstances suggest themselves. It is probable that from 10 to 15 per cent of the claims are questioned because of the nature of the reply of the employer. In the absence of penalty for misstatement from the employer the unionists feel that a statement from a prejudicial foreman may deprive a man of benefit unjustly.

An analysis of disallowed claims showed that disqualifications because of a trade dispute accounted for just over 17 per cent of the refusals of benefit during the year January, 1913, to January, 1914. The administration of this clause is unsatisfactory to the unions, because they have been unable to get a general ruling from the umpire as to what constitutes a trade dispute and because in specific instances they have not agreed as to what constituted a strike or lockout. Equally unpopular is the interpretation placed upon the act which debars a man from benefit when thrown out of work by a strike at his works, even though his department is unemployed only because of the absence of the other men. The two remaining disqualifications—misconduct and voluntary leaving without just cause—accounted for 38 per cent of the claims disallowed during the same period. In deciding whether a man has just cause for throwing up a job considerations enter which affect the minimum standard of employment—whether a man is justified in refusing to submit to working conditions to which he has grown accustomed during the last few years or whether he is justified in leaving for a higher wage.

Provision is made in the act for difference of opinion on such questions. The insurance officer attached to each of the eight divisional offices passes upon the claim. If payment is authorized, he notifies the local exchange where the claim originated. If the officer decides against the workman, the latter may appeal to a court of referees. These bodies consist of an impartial and salaried chairman designated by the Board of Trade, and a representative of the workers and of the employers drawn from a panel to which the

workers' representatives have been elected and to which the employers' have been appointed by the Board of Trade. During the first six months of benefit about one out of each twelve disallowed claims was appealed to a court of referees. If this court confirms the decision of the insurance officer against the workman, this closes the case; but if it disagrees, appeal may be carried by the officer to the umpire, whose decision is final. His judgment as to whether a man has just cause for leaving or whether he has refused suitable employment affects the mobility of labor by standardizing the conditions upon which workers may quit work and still draw benefit. These decisions, in the words of the *New Statesman*,

have clearly, on the whole, been marked by a conception of the duty of the workman to uphold his standard of working conditions which is sufficiently broad-minded and generous to go far toward securing the smooth and satisfactory working of the unemployment insurance scheme. . . . The system of unemployment insurance is clearly capable of being made one of the great bulwarks of the standard of life of the working class.<sup>1</sup>

The administrative machinery intrusted to the Board of Trade is relatively simple. The United Kingdom is divided into eight divisions, each of which has charge of the claims in its district and supervises the placement work of the exchanges. The latter handle all the initial claims, obtain work if possible, and notify the divisional office of the claim. The investigation and authorization of all payments is then made by this office, which notifies the local exchange whether or not benefit is payable. The exchange then acts upon this notification.

The local administration is controlled through Board of Trade regulations, which enunciate the procedure followed throughout the Kingdom. Further power is centered in the Board of Trade in its control over the unemployment fund, subject to the audit of the comptroller and auditor general, and in its discretion as to the investment of the funds which may be invested by the national debt commissioners.

An important adjunct in the administration is the coöperation of trade-unions having members in the insured trades. Under section 105 of the act an "association of workmen" may make arrangements

<sup>1</sup> *New Statesman*, August 1, 1914.

whereby it pays to its members the benefit they would have received under this act. Three fourths of the amount so paid out is then repaid by the Board of Trade. Such an arrangement may be made only on the condition that the union itself pays a benefit which is at least one third of the state benefit, has some method of proving the unemployment of its members and of notifying them of vacant positions. In practice the members of unions with such an agreement make their initial claim at the exchange and sign the union vacant book, which may be kept at the union offices, but which very frequently is found at the exchange. The claim is then forwarded to the divisional office, which reports to the exchange, as in other cases; the exchange then notifies the union secretary, who makes the payment, as to whether benefit is authorized. Since repayment to the union is made only for benefit which the labor exchanges would have paid if the claim had been made to them, it is important that the union secretary have the Board of Trade authorization for each payment made. At first difficulties were encountered, because the warm-hearted branch secretaries thought that they could pay state benefit with the same freedom with which they were accustomed to pay union out-of-work benefits; as a result payments were made with an unjustified expectation of a refund and consequent disappointment. It not infrequently happened that failure to obtain the anticipated repayment was due to inaccurate union bookkeeping which failed to pass the government auditor.

At the close of the first year, July, 1913, one hundred and five unions, with a membership of 539,775, including practically all the unions in the insured trades, had made this arrangement. This plan, necessitating the recording of union payments apart from those of nonunion men, has been the means of accumulating valuable information as to the incidence of unemployment among organized and unorganized workers. During the first year of benefits, when union men numbered approximately 25 per cent of the insured, union claims constituted 28 per cent of the total and absorbed 26 per cent of the expenditures. In general the unemployment of union men was shorter than of nonunionists—an average of 12.2 days as against 16.2 days. Since August, 1914, the union claims have been absorbing a phenomenally increasing proportion of the sum spent in benefits, amounting to 47 per cent of the expenditure

in January and February of 1916 and falling again to 30 per cent of the expenditure in August of 1916.

The coöperation with trade-unions has extended to all unions giving out-of-work benefit voluntarily to members. Unions, whether in insured trades or not, may receive a subsidy of one sixth of the total amount expended upon out-of-work benefits up to a maximum limit of 17 s. (\$4.14), including the 7 s. (\$1.70) of state benefit. Where the total benefit is less than 13 s. (\$3.16), a portion of the state 7 s. (\$1.70) is excluded in reckoning the total.

The advantages of this section up to July, 1913, had been claimed by 103 unions which also had arrangements under section 105, and in addition by 172 unions, with a membership of 376,041, in the noninsured occupations. A few of the large unions, such as the Durham Miners' Association and some of those among the cotton workers, have hesitated to apply for the subsidy because of their objection to a government audit of this expenditure and to signing an unemployment register.

Less difficulty has been experienced by the trade-unions in claiming this refund, because the requirements are not as stringent as those for a refund under section 105. For example, the statutory qualifications are not required in this instance; all that is necessary is for the union to certify that unemployment is not due to a trade dispute. The accounts of this expenditure are then subject to government audit before repayment. The ease with which unions have obtained the refund has been accompanied by departmental difficulties. Objection was raised by the war-time committee on retrenchment in public expenditure that many claims had been paid without detailed evidence as to their accuracy. The absence of a receipt from the workman that he had received this benefit and the general lack of proof that unemployment had come within the prescribed limitations increased the difficulties of the committee on public accounts in passing claims for repayment. As a result the audits have been slow, and amounts have been paid over to associations for which there was no proof of correct payment. Dissatisfaction extended to the treasury, which felt, according to the committee on public accounts, that a more satisfactory basis should be worked out by a special committee.

A marked reduction in the parliamentary appropriation for this purpose was presented in the budget for 1916-1917. Instead of the

annual sum of £70,000 (\$340,655) set aside during the first two years and of £100,000 (\$486,650) for the year 1915-1916, only £25,000 (\$121,662.50) appeared in the budget estimates for 1916-1917. The combined result of this dissatisfaction, of the exceptional prosperity during the war, and of the insistent demand for national economy has been the withdrawal of the subsidy of one sixth after May 31, 1916. Protests have been made and a deputation from the trade-union congress sought an explanation from the Board of Trade. They were told that nothing would be done during the present period of prosperity, but that the question would be reconsidered "when trade resumed its normal aspect."

The war has brought its own peculiar problem as to the insurance act. In the early fall of 1914, after the unemployment rate had taken a suddenly alarming upward trend, the Board of Trade announced that it would give an additional subsidy to trade-unions paying out-of-work benefits. Grants were to be made upon the condition that there was abnormal unemployment among its members, that the association was not paying out more than 17 s. (\$4.14) weekly in benefits, including the state 7 s. (\$1.70), and that the union would impose a special levy upon its employed members. The amount of this emergency grant was set at one third or one sixth of the benefits (in addition to the refund of one sixth already provided in the act), depending upon the amount of the weekly levy. Applications for this emergency grant were made by 185 associations, with 284,297 members. Of these, 135 unions (with 221,413 members) were in the cotton trade. This grant in aid was paid for expenditure incurred up to the close of May, 1915, when a total of £84,175 (\$409,637.64) had been expended. Of this sum £70,565 (\$343,404.57) was paid to unions in the textile trades, many of which had held aloof from the grant of one sixth under section 106 of the act.

Unemployment insurance has opened the way for dealing with the unemployment problem anticipated on the close of the war. The war office announced that it had undertaken to pay unemployment insurance benefits for one year to those who would be discharged from the army, regardless of the trades they entered. The Admiralty have had a similar plan under consideration. In the meantime an amending act was passed in July of 1916 extending the provisions of the act to those engaged in munition work ; in sawmilling, including machine

woodwork and the manufacture of wooden cases ; in the manufacture of chemicals, including oils, lubricants, soaps, candles, chemicals, paints, and varnishes ; the manufacture of metals, of rubber and rubber goods, of leather and leather goods, of bricks, cement, and artificial stone. These provisions are expected to include an additional 1,500,000 workmen. Extension may be made by the Board of Trade where there is a substantial amount of war work being done in any trade. In addition, workmen employed in an establishment in which some are insured may elect to come under the act, provided the employer consents. The plan which came into operation in September is but a temporary arrangement, in force for not more than five years, or not more than three years after the termination of the war, or such shorter period as the Board of Trade may determine.

The finances under the main act thus far have proved perfectly satisfactory. These are based upon data relating to the unemployment of 540,000 trade-unionists in the insured trades over a period of years, data which showed an average rate of unemployment of 8.6 per cent, or 26.8 days a year after an actuarial weighting. The period during which the insurance act has operated has been one of phenomenally low rate of unemployment ; at no time, except during the fall of 1914, has the rate, minus the actuarial weighting, risen above 3 per cent, while the rate for 1916 has fallen to a fraction of 1 per cent. These favoring circumstances have, of course, colored the entire history of the act.

The total income of the first year (1912-1913) was £2,011,304 (\$9,788,010.92), of which £362,397 (\$1,763,605) was expended on benefits and administration,<sup>1</sup> leaving a balance of £1,648,907 (\$8,024,405.92) for investment. The second year (1913-1914) showed a slight increase in income—£2,497,160 (\$12,152,429.14), of which £896,160 (\$4,361,162.64) was spent on benefits and administration,

<sup>1</sup> This does not represent the total spent on administration, since the major portion is included in the annual appropriations for labor exchanges. But of the total appropriation of £1,167,962 (\$5,683,887.07) made for labor exchanges and insurance during 1916-1917, it is impossible to ascertain the amounts chargeable to the respective accounts. A substantial share of the administrative expense attributable to insurance is covered by the grant of 10 per cent of the income derived from employers and workmen, according to the report of the committee on retrenchment in public expenditure.



leaving a balance of £1,601,000 (\$7,791,266.50). The period of industrial activity during four years has placed the fund in a strong financial position, so that in July of 1916 the fund had approximately £6,700,000 (\$32,605,550) standing to its credit.

During this period the act has achieved what it attempted; namely, provision of relief for the unemployed upon a dignified basis. The benefit afforded within the limitations of the act proved adequate in a study of 130,000 cases during the first six months of benefit. Aside from the 29 per cent of the unemployment recorded accounted for by the waiting week, 9 per cent which was not covered by benefit was almost entirely accounted for by the statutory disqualifications. Less than 1 per cent of unemployment was uncovered because of exhausted benefits. Although the small proportion remaining without the scope of the act presents a flattering picture, it must be remembered that men are less likely to claim if they have exceeded their allotted portion of benefit. As a result, men may be out of work without the knowledge of the Board of Trade. The figures are further colored by the fact that they are taken from the early days of the act, before many had had an opportunity to exhaust their benefit.

But the act has done more: it has encouraged the growth of voluntary provision. During the initial eighteen months twenty-one trade-unions, with a membership of 86,000 in the insured trades, which formerly paid no benefit, began an out-of-work benefit. In practically all cases the total benefits—including the state 7 s. (\$1.70)—is below 12 s. (\$2.92) a week. The subsidy of one sixth to other trade-unions has proved less successful, for only three trade-unions outside the insured trades had established an out-of-work benefit in July, 1914. The explanation of this is two-fold: first, that the unions which had not had this benefit feature previously were too poor to afford it and, second, that the grant has been too small to encourage them in what they still consider a perilous undertaking.

The grants under sections 105 and 106 have, on the whole, tended to strengthen the financial position of this trade-union benefit. For example, an old and well-established society, such as the Amalgamated Society of Engineers, added the state benefit to its own of 10 s. (\$2.43). Other societies receiving the subsidy of one sixth

have increased their benefits, as, for example, the British Steel Smelters' Association and the Workers' Union. The London Society of Compositors, even though it is not cordial to this government activity, considers this grant an aid to their funds.

Achievements in the prevention of unemployment, through the pressure of insurance contributions, have not been to the fore in years of exceptional prosperity. The possible future effect of the preventive measures, such as the refund to employers for regular workmen, the higher rate for casual labor, and the remission of the employers' and workers' contributions when short time is worked systematically as a substitute for reduction of working force during a time of trade depression, cannot be foretold upon the basis of four years of feverish industrial activity when the absence of pressure may have accounted for the belief of employers that the inducements offered were too slight to have any effect.

The most significant testimony of the success of the new method of dealing with unemployment as an industrial problem is the extension of the principle of insurance to meet some of the war-unemployment problems—the unemployment in the early days of the war, that occurring when soldiers are discharged from the front, and that due to the cessation of war orders. It is a method which has commended itself alike to the government official, to the general public, and to the workingman, who prefers this provision for unemployment on a business basis to the humiliating and pauperizing system of poor-law and charitable relief.

[On December 23, 1919, an unemployment insurance bill estimated to embrace 11,750,000 persons was introduced in the British Parliament. This bill would repeal existing legislation and would build up a more extensive plan along the lines adopted in the legislation here described. It is proposed that the rate of benefit be increased to 15s. per week in the case of men and 12s. per week in the case of women. The contributions in the case of men will be at the rate of 3*d.* per week from both men workers and their employers and in the case of women 2½*d.* per week from workers and employers each.—Ed.]

OLGA S. HALSEY

## V

### TRADE-UNION SICKNESS INSURANCE<sup>1</sup>

MY AFFILIATION with the International Typographical Union began in 1887, and one of my earliest recollections concerns the troubles attendant upon the administration of the Union's sick-benefit fund, which was finally abolished because, as I can see now, the methods of administration employed were not correct. There was lack of precedent and experience on which to base sick-benefit laws, and the abuses resulting because the funds were not properly guarded caused early death to a valuable feature of union policy.

For years, both as member and officer, I was opposed to trade-union-sick, out-of-work, and other relief measures, holding that they were outside the trade-union field, which should be restricted to the regulation of hours, wages, and working conditions. How far the leaven of progress has worked in my case may be gauged by the relief laws now on the books of the International Typographical Union, of which I was the executive officer for thirteen years; and nearly all of these features were added during my incumbency as president. I will refer to them specifically further on.

As I show in this paper, the officials of the great trade-unions now recognize the value of benefit features as builders of unions, as conservators of the membership of these unions, entirely aside from their assistance to the members as safeguards against financial loss during physical adversity.

One of the most direct benefits which a trade-unionist derives from membership in his organization is his participation in the various forms of insurance which are open to him by virtue of such membership. In fact, some of the first trade societies in this country were organized primarily as friendly and benevolent societies. During the latter part of the eighteenth century and the first quarter of the nineteenth the modern conceptions of wage class and wage

<sup>1</sup>From *American Labor Legislation Review*, Vol. IV (1914), pp. 82-91.

earner were unknown, because there had not yet developed a distinctive group of workmen dependent upon wages alone for their livelihood. Capital had not yet learned its ability to control and direct industry. The master workman of that period was at once workman, employer, and merchant capitalist. He owned the few necessary tools, purchased the raw material, hired the necessary help, if any, to aid him in preparing his product for market, and retailed his wares to his customers. Sometimes he worked on orders. In either case he dealt only with the producer of raw material and with the consumer in price determinations and with his helpers or journeymen in wage determinations. Since it was the expectation of every journeyman some day to become a master workman, and since the functions of master and journeyman were at times interchangeable, there was a very real identity of interest between master and man. Instead of organizations to fix wage scales, combinations to fix prices were more pertinent. These were not uncommon. But more often friendly and benevolent societies, including in their membership both masters and journeymen, were developed as mutual insurance companies. All of these were purely local in their jurisdiction, and nationalization was not even considered.

The half century beginning in the thirties witnessed revolutionary changes in American industrial life. The merchant capitalist, and a little later the merchant jobber, appeared to exercise the functions of middleman between the producer of raw material and the master workman on the one hand and the master workman and the consumer on the other. This made of the master workman a mere contractor. By playing one such contractor against another in receiving bids for work, the merchant capitalist was able to reduce the prices which he paid. The contractor, in turn, in order to keep in the race for commissions, shaved the wages of his journeymen. This forced the question of wages ahead of all other considerations in trade organizations and relegated the fraternal and insurance features of the earlier friendly societies to a minor position in their program.

The masters retained their membership in these new societies until, in the further development of the capitalistic function, they lost their identity as tool and machinery owners and contractors and became instead mere superintendents. By this time the trade

societies had begun to assume many of the earmarks of modern trade-unions, and the masters either withdrew or were forced to resign from membership. During this period many of the benevolent societies relinquished their insurance benefits and reorganized as trade-unions; others retained their benefits and added restrictive measures for the government of their members. Although the era of nationalization of trade-unions began at this time, the insurance features which were retained from the earlier societies were still administered by local unions. In fact, the leaders of the national movement at first discouraged benefits, on the ground that the development of such activities would hinder the enforcement of trade regulations.

In the present period of our industrial life, beginning with the last quarter of the nineteenth century, changes have been largely of degree rather than of kind. The capitalist has extended his activities and with them his power to direct and control the currents of industry. The workman has become more wage conscious and has banded with his fellows into strong national unions in an effort to establish and maintain standards of wages and working conditions. With this emergence of a group of workmen, separate and distinct from all other classes in their primary efforts to earn a living, have appeared problems to which the wage-earners as a class, and more especially as members of a particular union, have directed their attention.

With the return of prosperity following the close of the Civil War, this new element in the industrial population—the trade-unionists—sought for means by which they could insure themselves a place of increasing importance in the social scheme. Savings banks grew apace and mutual insurance societies became the order of the day. Of the enormous flood of immigrants, many had had experience in friendly societies in England. These, together with those American trade-unionists who still retained their faith in the benefit systems of the earlier trade societies, succeeded in interesting large numbers of wage-earners in the institution of mutual insurance within their own organizations. They were aided in their efforts by the public opinion of the time, which looked to the trade-unions for the solution of the problems which faced the wage-earners.

Gradually the earlier opposition of the national trade-union leaders to benefit systems was either broken down or was overridden,

so that by 1880 the national leaders were beginning to find reasons why benefit clauses should be incorporated in, rather than excluded from, their constitutions. It was argued that beneficiary features, whether or not they attracted members to the union, undoubtedly helped to retain them during a period when they might otherwise withdraw from membership. And since one of the big problems which every trade-union must face is the prevention of declinations in membership during industrial disturbances, this new theory of benefits was not without its effects.

The Granite Cutters' Union was the first national union to adopt a system of national sick benefits. This was introduced in 1877 and was made voluntary in its operation. The plan was not successful, and the sickness-insurance association was dissolved in 1888. The first national union to inaugurate a compulsory sick benefit was the Cigar Makers' Union, in 1880. Its success was immediate and its popularity grew rapidly. The German-American Typographia provided in its first national constitution, adopted in 1873, for the payment of sick benefits by the subordinate unions. This system proved unsatisfactory, and in 1884 the national sick benefit was adopted. Other prominent unions which have since adopted national sick benefits are: Barbers, 1893; Iron Molders, 1896; Tobacco Workers, 1896; Piano and Organ Workers, 1896; Pattern Makers, 1898; Leather Workers on Horse Goods, 1898; Boot and Shoe Workers, 1899; Garment Workers, 1900; Plumbers, 1903. Other national unions which have given much attention to the subject include the Typographical Union, the Brotherhood of Carpenters and Joiners, the Painters, the Wood Workers, and the Machinists.

The International Typographical Union manifested but little interest in the establishment of a sick benefit prior to 1892. Since that time the subject has been discussed at several national conventions and has even received the indorsement of international officers of the Union, but the proposal has been defeated in convention. The Union Printers' Home, however, cares not only for aged members but for many afflicted with diseases of the respiratory organs. Members who are afflicted with disease that makes their admission to the home inadvisable are, if otherwise eligible, placed on the union's pension roll. A pension of \$5 per week is paid to all incapacitated members sixty years of age or over, and there are also

mortuary benefits ranging from \$75 to \$400 according to length of membership.

It is not possible to give a significant summary of the extent of national trade-union sickness insurance in the United States at the present time. Twenty-seven of the unions affiliated with the American Federation of Labor paid out in national sick benefits during the year ending September 30, 1913, a little over \$800,000. Of this amount the Cigar Makers' Union alone paid out \$200,000.<sup>1</sup> Because this union best shows what is possible in national-union sick insurance, a brief statement of the history of this feature of the Union's policy is pertinent here. Beginning in 1881 with a total sick-benefit payment of less than \$4000, the annual amount has steadily increased until in 1911 it for the first time reached \$200,000. The per capita cost of this sick benefit has likewise increased from 27 cents in 1881 to \$3.73 in 1905, since which time it has remained nearly constant, although during the last two years it has been slightly more than \$4. Every member of the Union is entitled to participate in sick benefits. Members leaving the trade may obtain a trade "retiring card" which entitles them to sick benefits as long as they maintain the payment of a certain proportion of the regular dues. Sick members are entitled to receive \$5 per week for a period not to exceed thirteen weeks in any one year; no payments are made for sickness of less than seven days' duration. A membership of one year is required before the member is entitled to the sick benefit. Sickness caused by intemperance, debauchery, or immoral conduct is not accepted as a cause for claiming benefits.

By far the greater proportion of trade-unionists who are protected by sickness insurance receive support from local rather than from international unions. Of the 530 local unions reported in the

<sup>1</sup> The exact figures are: Total amount, all unions, \$816,336.41; Cigar Makers, \$204,775.61; Molders, \$159,434; Western Federation of Miners, \$96,066.44; Boot and Shoe Workers, \$74,790.81; Hotel and Restaurant Employees, \$58,911.06; Plumbers, \$47,000; Barbers, \$46,185.91; Bakers, \$33,870; Tailors, \$22,099.80; Retail Clerks, \$14,225; Iron and Steel Workers, \$10,515; A. F. of L. locals, \$8813.06; Photo Engravers, \$7865.51; Patternmakers, \$7053.04; Painters, \$6400; Tobacco Workers, \$5917; Cloth Hat and Cap Makers, \$3859; White Rats Actors, \$2156.67; Stonecutters, \$2000; Diamond Workers, \$1600; Steel and Copper Plate Printers, \$1280; Wire Weavers, \$350.50; Travelers' Goods and Leather Novelty Workers, \$300; Foundry Employees, \$245; Shingle Weavers, \$69; Pocket Knife Blade Grinders, \$54.

volume on "Workmen's Insurance and Benefit Funds in the United States," prepared in 1908 under the direction of the United States Commissioner of Labor, 308 pay sick benefits. These vary from \$1 to \$10 per week, while \$5 per week is the amount most often paid. The maximum periods for which sick benefits are provided vary from five weeks in one year to unlimited time, with thirteen weeks in any one year as the most common. Generally the period of illness must continue for seven days or more at any one time before benefits may be claimed. The number of days at the beginning of the illness for which benefits are not paid varies from none to twenty-one, while seven is the most common. The length of membership required in order to establish a right to claim benefits for sickness varies from no time at all to one year, with six months the most common. Most unions require the presentation of physicians' certificates and the investigation of sick-benefit claims by union sick committees.

While the International Typographical Union does not maintain a national sick-benefit fund, its local branches have perfected three separate forms of insurance against illness. These may be called the local-union sick-benefit insurance, the union-auxiliary mutual-aid insurance, and the union chapel or shop insurance. The first of these—the union sick-benefit insurance—is typified in the constitution of St. Louis Typographical Union No. 8. All members of this union who have been in continuous good standing for six months and who are incapacitated for work for a period of two weeks or longer are entitled to receive from the Union a weekly benefit of \$5 for a period not to exceed twelve weeks in any one year. If the illness is of such a nature as to require hospital accommodations, the Union stands ready to pay hospital charges not to exceed \$7 per week in lieu of the weekly sick benefit. Neither sick nor hospital benefit is extended to cases of alcoholism or to cases of chronic, contagious, or venereal disease.

The second form of sickness insurance among printers—the union-auxiliary mutual-aid insurance—is represented in the Chicago Union Printers' Mutual Aid Society. This society is a mutual insurance association organized solely for the purpose of giving financial aid and assistance to its members in time of sickness or accident. No person is eligible to membership who is not already a member in



good standing of Chicago Typographical Union No. 16. Members when sick are entitled to receive \$10 per week for a period not to exceed twenty-six weeks in any one year, provided their illness lasts for two weeks or longer. Membership in this society is voluntary and is not required of members of Typographical Union No. 16. Nevertheless, the Union encourages its members to join the society, and to effect this end it has abolished all union relief in case of sickness, except to those members whose applications for membership in the society have been rejected on account of their inability to pass the required medical examination. In such cases the union may grant relief by extending a loan of not more than \$25 in ordinary cases to sick and destitute members.

For an example of the third form of printers' sick benefits—the union chapel or shop insurance—we may refer to the Composing-room Relief Association of the New York *World*. Perhaps it is not quite accurate to call this association a union insurance society, since membership in a union is not required of all members in the association. Yet we call this a form of union chapel or shop insurance, because, except for this omission, it typifies that group of chapel and shop insurance organizations which do require of applicants for membership the presentation of a union card. This association was organized originally for the benefit of compositors alone, but it now includes among its 500 members editors, writers, employees of the business and circulation departments, stereotypers, pressmen, and mailers as well. Upon the payment of weekly dues of fifty cents, its members when sick are entitled to receive \$10 per week for a period not to exceed twenty-six weeks in any one year. Under certain conditions the dues may be increased in individual cases to \$1 or \$1.50 per week and the benefits to \$20 or \$30 per week accordingly.

Whether administered by the international union or by the subordinate locals, the sick benefit is intended to provide insurance against illness which temporarily incapacitates the wage-earner for his regular work. Members are usually debarred from such benefits in case of illness due to "intemperance, debauchery, or other immoral conduct"; and in some cases illness caused by "the member's own act" may not be used as a basis for benefit claims. In no case is the sick benefit intended to constitute a pension for members

suffering from chronic disability. The time limit during which a member may receive insurance in any one year prevents this. Some of the unions, notably the Iron Molders and the Boot and Shoe Workers, go even further and provide for retiring such members from the privilege of sick benefits in case they attempt to draw the maximum amount year after year.

The limelight of publicity has been turned upon industrial accidents and occupational diseases. As a result, individual students of social problems, philanthropic organizations, and state and national departments of labor are beginning to learn about the hazards of industrial life. The more knowledge we obtain, the more eager we are to embody it into measures which will prevent such accidents, do away with the necessity for exposure to occupational diseases, and compensate the sufferer and his family. Our former insistence upon the competence of voluntary action to deal with accidents and diseases in which the factor of the inherent risks of the industry is so great is being displaced by a belief in the necessity for compulsory insurance administered by governmental authority. Following closely upon the heels of the demand for compensation legislation is the cry for old-age pensions, mothers' pensions, and a host of other reforms which abroad have already become realities, but which in America are just being divested of the stigma of socialism and paternalism.

In some of these proposed reforms it is not very easy to trace a causal relationship between the condition which demands a remedy and society's responsibility for that condition. Still more difficult is it to measure social responsibility in considering what we are accustomed to call the private misfortune of ordinary illness. But the fact remains that we are forced to recognize the presence of a vast deal of sickness among wage-earners, against which no provision has been made and for which relief is necessary. Some day we may be asked to provide compulsory state or national insurance against this also. At present we must look to other agencies. The trade-union, and especially the international union, is peculiarly fitted to administer sickness insurance. For the most part, each local union is made up of people of the same nationality, of similar habits of life, resembling each other in physical make-up, and subject to similar risks and exposures. They know one another personally

and are able to detect imposture in the rare cases where this is attempted. Then, too, sickness insurance, when conducted on the local mutual plan, requires neither large reserves nor a great investment of funds. When conducted by an international union, there is, of course, need for a reserve fund, and there is also greater care and more approved business methods in the disbursement of money.

Therefore, whatever may be our ideas of the activity of governmental agencies in other forms of industrial insurance, we must admit that for the present at least we are not ready for the state to insure our wage-earners against sickness. We must also recognize that at present wage-earners as a class cannot, or at least do not, make individual provision for temporary disability due to illness. What is not done individually must be done collectively if at all. It is for these reasons that we believe in trade-union sickness insurance and that we are ready to offer it encouragement.

Judging from some of the opinions expressed here today, there may be criticism of trade-union sick-insurance methods on the ground that all of the funds are contributed by employees, the employer not bearing a share of the expenditures. From a somewhat extended experience it is my conviction that in a well-organized industry the employer *does* contribute,—indirectly, it is true, but actually none the less,—for the cost to the union member is later used by the union as an argument for an increased wage scale, and is so accepted by employers, in the printing industry at least. All the benevolent features of the International Typographical Union, including the pension fund from which 1100 members are now drawing pensions, the mortuary fund, and the Union Printers' Home, are supported by the members.

It was said here today that compulsory insurance is never enthusiastically supported. Thousands of our members voted against the mortuary and pension laws; but the majority vote was for these laws, and they are compulsory. They have been in effect for several years, and if they were resubmitted now, I am satisfied that there would be a comparatively small vote against them.

As far as a joint fund for such benefits is concerned, I am satisfied that even with a board of directors of seven twelfths for the employees and five twelfths for the employer, the latter would dictate the policies and control the fund. Naturally the wage-earners

look askance at these company-instituted and company-controlled funds, as they give the impression that they are instituted in order that the worker may be more firmly bound to the industry and less liable to form industrial organizations for the regulation of hours, wages, and working conditions. I am opposed to any scheme which takes out of the pay envelope the "contribution" of the employee. He should receive his wages in full.

A strong union, capable of protecting the rights of the individual, can successfully conduct sick-insurance features. Unorganized workers will find their best protection in state-supervised or state-instituted sickness insurance, for they will not then be at the mercy of the rapacity or greed or kindness or charity of the employer. The state, and not mixed directorates, will see that full and even justice is accorded.

With the general adoption of compensation for industrial accidents will come reasonably safe factories, for these laws will do as much for safety as the inspection service of the state departments of labor. Properly guarded machinery will mean a lower insurance rate. Following compensation for industrial accidents will come compensation for industrial diseases, and this will in turn mean reasonably safe factories from a health standpoint. Both will raise the standard of living, and a higher standard of living will mean a healthier people and less sickness of a general nature.

Pay to the wage-earners living wages and give them the eight-hour day, and they will spend their money wisely and provide their own health insurance. There will then be no occasion for worry on the part of those employers who may have the idea that they are the natural guardians and protectors of their workpeople, and who seek to mold laws accordingly.

JAMES M. LYNCH

INDUSTRIAL COMMISSION OF NEW YORK

## VI

### HEALTH PROGRAM<sup>1</sup>

THE campaign against tuberculosis has given to the American people a new idea of the doctor. We had thought of him as a last resort after we had doctored ourselves and tried out the patent medicines and practiced faith. The antituberculosis movement has begun to show us that the doctor should be first. We *know* that we need him in sickness. We begin to want him also to *prevent* sickness.

Likewise, the workingmen's accident-compensation laws have given us a new idea regarding *insurance*. We got our idea of insurance from life insurance. Death is inevitable, and the purpose of life insurance is the *philanthropic* purpose of paying uncertain but unavoidable expenses when dead. So we thought that accidents were inevitable, and that the purpose of accident insurance was the philanthropic purpose of *relief* to injured workmen and to the families of killed workmen. But the compensation laws have shown us that accidents are largely preventable and that employers can prevent them. So we have learned to think that the first purpose of accident insurance is the *business* purpose of making money by preventing accidents.

These compensation laws have a double mechanism. They are an employer's tax on accidents and a workman's insurance against unprevented accidents. Employers can escape the tax, and thus cut down the cost of compensation, by preventing accidents. There are records of employers who have reduced accidents 90 per cent. Some of them affirm that the money put into accident prevention is the most profitable part of their business.

So a new profession has sprung up. Or, rather, those persons who formerly practiced the profession of claim agent, for the purpose of protecting their employers against lawsuits, have become *safety experts*, and they now protect their employers against the tax on accidents, by preventing the accidents.

<sup>1</sup> By J. R. Commons. Address delivered at Fifteenth Annual Meeting, National Tuberculosis Association, June, 1919.

I sometimes think it is more difficult to persuade the average doctor to become a health expert and to prevent sickness than it was to convert the claim agent into a safety expert to prevent accidents. As a matter of fact, the claim agent fought the process of conversion about as stiffly as he could, and it was only the overwhelming power of a tax on accidents that converted him. Now he is proud of his new profession, and his employer is proud of him. I occasionally hear of employers who say what fools they were in fighting accident compensation. The new thing certainly did look bad for them at the time. But they are escaping the tax on accidents by devoting the same kind of business ability to preventing accidents that they had devoted to manufacturing and selling their product.<sup>1</sup>

It is much the same with the proposed business tax on sickness. We read of the probable enormous cost to industry of compulsory health insurance. It looks like bankruptcy. I am willing to accept the figures. They are presumably based on the existing amount of sickness, although the same insurance experts turn around and say there is not much sickness anyhow.

The explanation is rather simple. They fail to distinguish *philanthropy from business*. If this large amount of sickness is unpreventable, then the cost of relief to the sick in a proper humanitarian way will doubtless be very great. But if it is largely preventable, then the proper American way is to offer to our business men a chance to make a big profit by preventing it.

I believe our business men have more business ability than those of other countries. They are ingenious, alert, they take chances, and they know how to employ experts to work out the technical details. In these respects they are also quite superior to our politicians and other government officials. It is a curious fact that our insurance experts, who try to prove to us that the purpose of insurance is *not prevention but relief*, wish to turn over the prevention of sickness in industry not to our business men who control the industry but to our politicians. They give us attractive programs of public-health administration, of great and efficient federal, state, and municipal health departments, of public-health nurses, of city and county sanatoria, hospitals, and clinics, of state health inspectors and state and municipal factory inspectors going into the homes and factories and

<sup>1</sup>See above, p. 9.

vigorously enforcing a long list of beneficent sanitary laws and health laws and factory-inspection laws.

Well, we had a good deal of experience along this line in enforcing the factory-inspection laws which require safeguards on machinery as protection against accidents. The factory inspector's job was a very disagreeable and even heroic job. Occasionally he was kicked out by an employer, or, if not kicked out of the factory, was inscrutably lifted out of his job. He had to collect evidence of violations of law, and this evidence had to be sufficient to prove to a judge and jury that the employer was a petty criminal, and the law gave to the criminal the benefit of every doubt. Thus the factory inspector was strung along the rocky career of a detective, sneaking in where he was not wanted, or hustled past the dangerous machinery, and it is no wonder that many of them became blind. Even if they did see things, very little accident prevention came out of it. The successful factory inspector was the one who held his job, not the one who prevented accidents.

All of this was greatly changed when workmen's compensation, with its tax on accidents, came in. Now the employer is not treated like a criminal; he is a taxpayer. But—unlike some other taxes—he is allowed to make money by evading this tax. So he eagerly invites the inspector to come in and show him how to escape the tax by preventing the accidents.

But he finds that the old-time political inspector cannot see. What the employer wants is not a detective anyhow, he wants a safety expert. So he hires his own expert, starts a nation-wide "safety first" campaign, cultivates the "safety spirit" in his employees and in the public.

Then, behold, the factory inspector also begins to be transformed. It is remarkable what influence business men have on government at the points where they can make a profit or avoid a loss. In the midst of even the most corrupt municipal politics they nearly always succeed in having an efficient fire department. I do not know of any workmen or experts in public or private employment who have a greater pride in their job, or greater efficiency, than the city firemen and fire chiefs. It is because business makes money by them. And so with the factory inspectors. When business men want factory inspectors to be made exempt from politics, because they want them to

help keep down the accident tax on business, then the factory inspector becomes a new man. Government itself becomes better, for government-in-action, at this point, is the factory-inspector-in-action.

Consequently I offer no objection to the health program of the insurance experts who would turn over sickness prevention to the politicians. I see a great opportunity to improve politics, to enlarge and improve our health departments, and thus to prevent sickness. But I do not see it effective and on a sufficiently large scale until sickness prevention is made a source of financial profit to business men.

This is what is intended in the program of health insurance. There is, of course, also a philanthropic purpose in that program, but that philanthropic purpose is really secondary. The main purpose is the business purpose of making sickness prevention profitable. There does not seem to be any other way of reaching *all* of our business men, as well as workingmen. Many of our big corporations have begun to take hold of sickness prevention. They look on it as a business proposition and they resent the name sometimes given to it of "welfare work." The difficulty, however, is that it is not universal and they do not put enough business ability into it. One reason is that it is too easy to shift the entire cost of sickness over to the workman and his family. The thing works automatically. When the workman gets sick he just lays off on his own initiative and pays his own bills if he can, and somebody else takes his place.

But health insurance is a follow-up proposition. The employer cannot shift the entire cost over to the workmen, but must share the cost of doctors and nurses and hospitals and medicines and must continue to pay a part of the worker's wages even when absent from work. It is a sickness tax on industry, coupled with an insurance scheme in order to spread the tax over the industry and over a period of time. But since the industry is not solely responsible for sickness, the workman also is required to contribute to the insurance fund, and a part of the tax is thereby spread out over his wages.

If it were not that several large corporations have already voluntarily adopted this plan of health insurance and set the example, we could not know certainly how it would work. But we do know, from their example, that it prevents sickness. I know such a corporation that has reduced the number of days lost on account of sickness one



half, and the resultant increase in wages and the increase in efficiency of workers has been much greater than the total cost of the insurance.

Another corporation figured that they stood to lose \$600 on the average on account of their workmen who came down with tuberculosis, because they had undertaken to provide sanatoria for the cure of their tuberculous workmen and cash benefits for their families while getting cured. They could save, on the average, \$600 if they could detect incipient tuberculosis before anybody suspected it. They had voluntarily taxed themselves for the *cure* of tuberculosis and then saved a large part of the tax by *preventing* it.

Another corporation, which furnishes physicians and nurses free to its employees, finds that where six years ago 75 per cent of their time was spent in *curing* sickness and only 25 per cent in *preventing* it, now they spend 75 per cent of their time in *preventing* sickness, and only 25 per cent is needed for the *cure* of it. This company appropriates \$60,000 a year to its medical department, and out of this budget has saved enough money in one year to procure and equip what they call a "Rest Home," where employees below par may go and recuperate at the expense of the company.

Other examples like these might be given. They are convincing and conclusive. When business men, for the sake of increasing the efficiency of their employees, voluntarily tax themselves for the cure of sickness, they end by preventing it. If other business men, not as progressive, are taxed by law for the cure of sickness, then business ability will find abundant means of preventing sickness.

Here is the big inducement for a public-health program. Not many corporations are big enough, not farseeing enough, to tax themselves voluntarily, as these have done, for the support of hospitals and sanatoria, clinics, doctors, and nurses. The overwhelming majority of business men must depend on the public-health authorities for this assistance. And they will not seriously look for this assistance until they are taxed by law for the sickness that they have not prevented.

The other method of starting a health program is to start it before there is a business demand for it. Mr. Hoffman,<sup>1</sup> for example, says that the "American Association for Labor Legislation could not better serve the interests of American labor than by exerting itself

<sup>1</sup> See F. L. Hoffman, *Facts and Fallacies of Compulsory Health Insurance*, P. 45.

effectively in behalf of the *enactment and enforcement of legislation* providing more efficient governmental supervision and control of the dusty and other trades and occupations predisposing to an excessive morbidity and mortality from pulmonary tuberculosis."

But what does the "enactment and enforcement" of such legislation signify? It signifies increasing the number of petty criminals among business men. It is rather odd that a person who is so greatly disturbed about what he calls "paternalism" and "state socialism" and "class legislation" and the "menace of coercive laws" should find himself calling for laws to increase the criminality of business men. I suppose it is *not class legislation* to make petty criminals out of employers for the sake of their employees, but it is class legislation to tax them on behalf of their employees. I suppose it is not "paternalism" to punish your child for doing evil, but it is paternalism to reward him for doing good. It seems to be not so much "coercive laws" in general that our insurance experts are against as coercive laws that do not make criminals.

We must have legislation in one way or another if we get anywhere in a health program, and the only question is what kind of legislation it shall be. If we go after repressive legislation which increases criminality, we run great risks of breaking down our health departments through practical politics in the hopeless task of detecting and prosecuting criminals; but if we go after coöperative legislation that offers the inducement of profit to business men if they will take a hand themselves in preventing sickness, we shall strengthen the demand for efficient health departments free from politics. Instead of starting a public-health program in defiance of business instincts, we start it by building up a business demand for it.

That America stands in need of such a program we realize now as never before. We have had our first national survey of the people's health. For the first time the medical profession has been organized on a national scale for the detection of disease. Thousands of our young men, at the prime of life, when the nation needed them, have been rejected and returned to their homes. Every local community in the nation has been awakened up to the previously undiscovered tuberculosis and physical and mental defects in its midst. Even our most efficient health departments did not know anything about three fourths or even nine tenths of the tuberculosis in their

jurisdiction. We know now, as never before, how much it means to the nation to start at the very beginning, before people suspect that anything is wrong with themselves. We know that if thousands were rejected at the draft, there must be additional thousands and hundreds of thousands defective in like manner. The draft reached 10,000,000. But there are 100,000,000 of us.

And there we leave it. These boys of ours return to their homes, and nothing is done about it. These hundreds of thousands need a similar medical examination, and there are no doctors to examine them. They are no longer immediately needed to defend the nation in war, but they are needed in agriculture, manufactures, mining, and every business and profession where they can help to make the nation prosperous and happy in time of peace. Health is our first and greatest asset; sickness and poor physique our greatest liability. We have abundant natural resources. We have a stimulating, even overstimulating, climate. We have a more intense competitive business and industry than any other nation. We need stronger men and women to keep up the pace than any other nation. Our wealth is not in our resources and climate, but in our oncoming men and women. The doctor is our greatest producer of wealth. The rest of us can do nothing if the doctor falls down. Schools and education are fruitless without health. Industry carries an unseen but costly expense of inefficiency and absenteeism on account of ill health and poor physique. We, as a nation, have begun to see the futility of education and industry if we do not have health and physique to build upon.

Shall the doctor rise to this demand and do his part? He may cling to the old idea that his is the art of curing people of sickness and driving out the evil that previously got into them. That is important enough; we do not need to be told. But will he really also get a living sense of what he might do and how he must do it if he would make the modern scientific preventive medicine available for everybody? He can try to bail out the river as it flows through the country, but can he go back to the 100,000,000 unseen sources of the river of sickness?

I do not see that the profession as a whole is in the frame of mind to do it. They will agree with you that it ought to be done, and, more than any other profession or business, the medical profession has a high sense of public responsibility. Other professions look

complacently on an increase in the public demand for their services. Lawyers, on the whole, are not eager to cut down the amount of litigation and legal business in the country. Doctors, on the other hand, support all measures tending to improve the public health and cut down the demand for doctors.

But, on the whole, they seem to think that the actual work of improving the public health belongs to the public-health departments and not to the practicing physicians. For that actual work requires much more coöperation on their part with the health departments than they seem to be willing to undertake. They are glad to educate the public, and to warn the public, and to approve public-health resolutions, but to *organize themselves* as a profession and to do what is necessary in order to examine 100,000,000 people and then keep them continuously in good health does not seem to appeal to them.

Only in one branch of the medical profession does there seem to be a truly live appreciation of what an outsider would think is pre-eminently needed. In that remarkable Framingham demonstration the tuberculosis specialists have started out to examine and follow up an entire community in advance of individual complaints. They do it through the coöperation of the practicing physicians, and in order to accomplish this they work through the organized medical society and through the public-health department of the city. It means the organization of the community itself, the organization of the nurses, and the daily coöperation of the people, the doctors, the nurses, the specialists, and the public-health department in a great systematic program of early detection and sickness prevention.

This Framingham demonstration seems to me a far more impressive lesson than any campaign ever undertaken by the Tuberculosis Association for the construction of sanatoria and the cure of advanced cases. It was natural that the early tendency of tuberculosis specialists, like other specialists, was directed towards hospitals, sanatoria, and treatment of advanced cases. What is wanted now is a Framingham demonstration in every state of the Union—not fewer sanatoria but more clinics. The people of this country need to learn how to go about it in order to coöperate with the doctors. We never shall learn unless the physicians show us. We know what we want, but we do not know how to do it. A Framingham

demonstration in every state would show us how, and would waken up the entire medical profession to the methods and possibilities of sickness prevention.

Almost more than any other human ailment is tuberculosis a problem of early examination and prevention. If nearly all of us have been carrying around the germ in little self-made pockets without knowing it, what we want is not merely to keep away from the germ but also to have somebody find out for us as soon as possible whether the pockets are holding out and to tell us what to do to keep them from breaking loose. Evidently in this search for tuberculosis almost every other unseen human ailment can be uncovered. There are other lurking germs, and, most of all, there is the everyday life in the home, in the factory and shop, there is the fatigue, the strain, the food, the shelter, that determine whether or not the body is resisting and overcoming its subtle enemies. That which is done to discover and head off tuberculosis may well discover and head off many of the other ailments and poor physique. The tuberculosis specialist is the least specialized of all medical specialists, for he must take into account all of the social and industrial conditions as well as the individual conditions that predispose to disease. In doing so he must have the coöperation of the entire profession, of the entire community, and of the health departments.

The great question in a health program is how to get this coöperation universally. What it amounts to is practically a revised view of the ethics of the medical profession. It seems that, in our great cities at least, those who get the best medical attention are the very rich and the very poor. For these extreme classes medical advice and care are practically free. The very rich do not mind the expense, and the very poor are not ashamed if somebody else pays their bills. But the extreme rich and poor are scarcely 5 or 10 per cent of the total population. The idea of extending free medicine to the other 90 per cent of the population seems revolting to many physicians.

At the University of Wisconsin we have free medical supervision for 5000 students. The state is taxed for health supervision of the students exactly as it is taxed for their education. As a result, the students consult the physicians on an average probably four or five times as often during the year as they would if they had to pay at each consultation, besides getting the thorough physical examination

at the beginning of the year. The result has been a great reduction in sickness, a reduction in absenteeism from classes, and greatly increased student efficiency. The loss of time due to bed illness has been reduced 40 to 60 per cent, due to the early treatment of preventable conditions. The frequent consultations have reduced serious illness and its complications at least 50 per cent. During the eight years of this medical supervision the University death rate has been reduced to only one-fourth of the general expectant rate, exclusive of tuberculosis, at the same age period, and even the death rate from the recent "flu" epidemic was believed to be only one fourth of the general death rate attributable to that cause.

Why should not something like this arrangement be extended to the entire population of the state and the nation? It does for 5000 of the great middle class by taxation what the very rich and the very poor have been getting in the great cities substantially free of cost to themselves.

The principal reason against extending it to the nation seems to be the opposition of doctors. The idea that people generally should consult them without paying for each consultation seems unusual to them. Consequently we have that ethics of the profession which permits heavy fees charged to wealthy patients in order to make up for the free service given to indigent patients. Even if there are no wealthy patients in the neighborhood, the doctor expects to render a considerable amount of service free of charge, or, what is the same thing, to carry a large account of uncollectable bills, and these charges must be met by correspondingly higher fees charged to the people who do pay their bills. It amounts to a tax on the wealthy and on the great middle class in order to give free service to a pauperized class or a class that is not ashamed to dodge its doctor's bills.

As a result, this great middle class of farmers, wage-earners, and people with moderate incomes, who will not accept free service, do not consult the doctors and pay the fees until they are compelled by sickness. They hold off, and doctor themselves, and buy patent medicines, until it is too late. If consultations were free, they doubtless would consult the doctors, as our students do, many times as often as they now do.

This is what I call prevention of sickness, and this is what health insurance means. It means free consultations, and it means payment

of the doctors, to that extent, out of a fund contributed in advance by the people and by the industries of the country. It means free consultations and free examinations and diagnoses supported by taxation through the medium of insurance funds. It means, instead of the physician's being compelled to constitute himself a tax assessor and tax collector on the wealthy and the middle class in order to furnish the poor with free service after they are sick, that the legislature shall create its own system of taxation in order that the doctor may freely serve all persons long before they get sick.

One of the principal obstacles, as I have just said, to the method of starting a health program by means of universal health insurance is the attitude of many doctors. Doctors have several reasons for suspicion. They know something about the contract doctors. They see mutual benefit societies let out contracts to the lowest bidder to take care of their members in sickness. But these mutual-benefit societies have the old idea of insurance as a philanthropic measure of relief, not the new idea of insurance as a means of preventing sickness. They look on sickness as inevitable and the doctor as a palliative. They get this idea largely from the doctors themselves. They have not yet fully learned from their doctors of the enormous advance that the past thirty years has made possible in preventive medicine. Neither have these mutual societies the business ability nor business inducement to prevent sickness that the employer has. Their purpose is charity, not business. These mutual societies will always have a most important part in a universal health program. They do one thing that neither the doctor nor the employer can do. The very fact that they let out contracts to the lowest bidders indicates that they try to keep down expenses. They assess themselves, and if expenses go up their assessments go up. For this reason they are careful to watch their members and to prevent them from feigning sickness and getting the benefits fraudulently. In this respect they can do what neither employers nor doctors can do without their help, and this is a reason why health-insurance programs propose greatly to enlarge the field of these mutual societies, and to require their members, as well as the employers, to contribute to the insurance funds. But their field is largely the care of unprevented sickness. Not until the business ability of the community is directed towards prevention can we expect that the enormous advances in medical

science of the past thirty years will be generally utilized. Then the doctor who bids on contracts will disappear, much as the old-time factory inspector is giving way to the safety expert.

The other important obstacle to health insurance is the idea, not only of insurance experts but also of the public and of physicians and surgeons, that the work of the practicing physician is the art of healing the sick rather than the art of preventing their sickness. Those who are interested in the problem of tuberculosis are the pioneers in revising this mistaken view, for they realize, as others do not, how little can be accomplished without the complete organization of the profession and of the community for the purpose of discovery and prevention. It is fortunate that they have had their own association and their own funds, independent of the profession in general, for it is this that enables them to go ahead in their educational campaign of organization, legislation, and prevention, without waiting for others.

The work of the Tuberculosis Association reveals that palliatives and halfway measures are inadequate. It reveals to us, most of all, the need of a medical profession that shall be in truth the *guardian* of the public health as well as practitioners of the healing art—a profession so organized that the wonderful developments of medical science shall reach every person, for the public health is nothing but the protection of each individual's health.

It reveals to us the need of placing this profession on a business basis instead of leaving its practitioners to the doubtful expedient of financing their calls for charity by taxing it up to the more well-to-do.

The work of the Tuberculosis Association reveals the need of enlisting the business ability of the nation in the campaign of prevention. Industry already pays an unseen tax in the absenteeism and inefficiency caused by sickness and poor physique. But not until this tax is made visible in terms of money, where it can be actually seen entering into the cost of manufacture, will business men generally look to the medical profession for assistance in reducing it. When the vigilance of business men is enlisted in the cause, then will the high aims of the new medical profession, which seeks to keep the nation healthy as well as cure its sickness, be more nearly realized. Medicine will more nearly become public medicine, but



liberated from politics. Health departments, in every town and rural district, instead of trying to do the work of prevention themselves unaided, will be the public agencies which furnish to the private practitioners the dispensaries, clinics, hospitals, sanatoria, school and county nurses, which make it financially possible for the private practitioners to add the work of prevention to their work of healing.

A truly comprehensive health program is not restricted to any one thing. It means, of course, the cure of sickness. But it means, also, the personal coöperation of every private citizen in sickness prevention. It means the business enterprise of every capitalist and employer of labor. It means sickness insurance. It means increased taxation on unprevented sickness, with ultimately reduced taxation on property. It means, most of all, a medical profession able and willing to bring to the service of the entire nation the marvelous discoveries of the science of preventive medicine.

JOHN R. COMMONS

UNIVERSITY OF WISCONSIN

## PART II. THE LABOR MARKET

### VII

#### AUTOBIOGRAPHIES OF FLOATING LABORERS<sup>1</sup>

NUMBER 2. Age fifty-six years, born in America, of American parents. Single. Still strong. When he was between twenty and twenty-five years of age he wanted to marry, but never had enough money to establish a home. He became a "regular" lumberjack. A "regular" lumberjack cannot marry, for he cannot take his wife to the camp, and it is of no use for her to live in the city. Secondly, if a man becomes a "regular" lumberjack, he is not fit for married life; he drinks, fights, and leads an immoral life. He does not know any trade. While a boy he wanted to learn mechanics, to become a worker in a machine shop, but he had no chance for this, for his folks were poor and he did not have a sense of how to go about learning this desired trade; his father was not very bright either—he could not read and write. He himself had been in a public school for his education.

His father was a farmer, and he started to work on his father's farm when ten years of age, to do chores and every kind of farming work. His mother died when he was very young. As the farm was heavily mortgaged, it was sold; not much money was left.

When he was sixteen years of age he went into the lumber woods to provide for himself. He worked from fourteen to fifteen hours a day. The pay was, at the beginning, \$18 a month and board. Laundry was done by the men themselves. Two men slept in a bunk; the bunks were in two stories. The bedding was hemlock brush, covered with a blanket. In the bunk house there was no iron stove, but just a fireplace called "kabuke." The foreman was a bad man, always hollering, abusing, ever dissatisfied with his men, and turning them out two hours before "they could see wolves."

<sup>1</sup>From interviews made for the U. S. Industrial Relations Commission, 1914.

The plates and table utensils were made of wood by the men themselves. The board was very poor; it consisted mostly of salt pork and salt beef. There was no ventilation in the bunk houses. There was no wooden floor, just the naked earth. Nobody washed the blankets; they were dirty and had vermin.

He managed to work on this place eight years, in winter and in summer. The company then moved to another place, where he worked a year more with the same company. He then wanted to try other companies, believing that they might be better, but the conditions were almost the same, perhaps a little better. He worked here and there one year. He quit because other fellows told him of a place where the conditions were much better. He tried that place, but the conditions were just the same. He then migrated to the state of Wisconsin, and worked there in various lumber camps two years, but the labor conditions in the lumber camps in Wisconsin were worse than in Michigan. He wanted to see the camps in Minnesota, and migrated there. He worked there five years with two companies. In the camp of one the labor conditions were a little better than in the lumber camps of Wisconsin, but in the camp of the other the conditions were still worse.

He then wanted to see his folks, father and sister, and came back to Michigan, having about \$60. After a week with his folks he went to work for a lumber jobber, thirteen to fourteen hours a day, \$35 a month and board. He paid for the washing of his laundry 80 cents a month. Two men slept in one bunk; the bunks were in two and three stories. The bedding consisted of sacks filled with hay and straw, and blankets, which were never washed and were full of vermin. The bunk house was overcrowded. The air in the night was very bad; he felt dizzy and had a bad taste in his mouth in the morning. There were no spittoons, no privy vaults; the men were often sick, catching cold and grippe. The drinking water was bad, just surface or swamp water. He felt quite tired in the evening. He worked at this place about five months. He had only from \$12 to \$15 left. He then went to work with a company, from eleven to twelve hours a day, the pay being \$35 a month and board. His work consisted in driving oxen. Two men slept in one bunk; the bunks were in two stories; the floor was dirty; the bedding consisted of loose straw covered with a blanket. The drinking was good

—spring water. The foreman was a good man. The goods in the commissary store were the same as elsewhere, but the price was from 15 to 50 per cent higher than in the stores in town.

A year ago he worked in the lumber camp of ——— & Co. from eleven and one-half to twelve hours a day. The pay was \$32 a month and board. Two men slept in one bunk; the bunks were in three stories. The bunk house was overcrowded; about 125 to 140 men slept in the same bunk house. The floor was dirty; it was difficult to get through the mud. The bedding consisted of straw and hay on boards; there were "bedbugs and lice"; although washed, the bedding could not be kept clean, because dirty men were going and coming. The board was very good, and the water was good, but the foreman was always speeding up and swearing with every word he said. Could not stand this job any longer than two and one-half days. From that place he came to the present camp.

They work here eleven hours a day, and his pay is \$32 a month and board. His work consists of driving oxen. He can work continuously only two or three weeks; then he gets his pay, goes to the town of P——, drinks, fights, "just having a good time." Lately he has been working four weeks, and feels a need of "rest." He has not been out of work because he could not secure it; he can secure work any time. He has never stolen anything, never begged nor applied for charity; but what he has done is heavy drinking (whisky), prostitution, and fighting. He has a gash on his face, and half of his nose was bitten off in a saloon fight many years ago. He has had three accidents in the lumber work: first, he had his hand broken; second, his leg was broken; and the third time his left shoulder was hurt. These accidents occurred by skidding. He is a "regular" lumberjack, because he makes his living by working in the lumber industry, drinks, fights, and lives in the way in which a lumberjack does.

He thinks that the worst evil in the lumber camps is the bunk houses. They ought to be built similar to hotels. Every man ought to have his own small room, and the board should be provided as in city boarding houses. This would not cost much more for the company than a camp costs now. The company gives enough to eat and the meals are prepared properly, but they serve the same meals day in and day out, week in and week out, at all times. After a time a

man becomes tired, from the sameness of the meals. The camps are nowadays more or less permanent, because the railroad is bringing logs in and carrying the men to working places at great distances.

To the question as to what the government must do in order to better the conditions of the life of lumberjacks, he answered: "Close all saloons, and wipe out all the prostitute houses; if this were done, the lumberjacks would take pretty good care of themselves as to bettering the labor conditions in the camps."

Jungle, Redfern, South Dakota

*Number 3.* Age twenty-four years, Dane. Seven years in this country. Came to America because it is the best country in the world. The best opportunities to better himself.

Latin (high-school) education. Started out as a sailor. Learned steam engineering. Quit it because of the hardships and monotony in the life of a sailor. Pay was from \$15 to \$20 a month. Worked in various industries in America. Had a job in the shipyard at Philadelphia, \$2 a day, ten hours; treatment first class. Quit. Started to go sailing on the Great Lakes—higher wages, more opportunity of saving money. Could not get job because of the sailors' union; entrance fees \$25; he had not the money. A job in factory—one day; conditions bad. Secured a job in a rubber works; \$1.50, afterwards \$1.75; ten hours a day. Laid off because of the business depression. Went out to a farm to pick potatoes at \$1 a day, ten hours; the board was good. Returned to the East. No work for four or five months. Got money from home, about \$200—money he had saved. Went back to Buffalo; paid his way. Was told that a steel plant was to be opened there. Did not get work there—because nearly all men taken were south European immigrants. Wanted to enter the union. The union did not let him in, because too many old members were around out of work. The Lake Carriers' Association declared open shop. Got a job from this Association. It was necessary to sign a statement declaring loyalty to Association or to union. He signed the union oath, after which he was fired. Started for the West. Believed that the West was better. Went broke in Chicago. Went into restaurant asking for dish-washing. Did not get work, but got meals. Went to Santa Fe.

Beat his way down to Missouri. Went over the country roads not very far from Kansas City. Avoided the city because of the fear of getting arrested for vagrancy. Asked farmers for job. Begged. Got one job at 50 cents a day for five days, when the job was done. After buying some clothing, 25 cents left. Bought a loaf of bread, ice cream—all money gone. Went into Nebraska—westward. Several days without eating, except apples. Got a job with a German farmer, haymaking, \$1.50 a day, ten to eleven hours. Good board, slept in the barn. Treatment was fine. Six days, the job was done. Partner got hurt very badly, trying to get a freight train, and was sent home East. Continued his way toward West. Freightied. Got a job on a farm in Nebraska, \$18 a month. Chores and general farm work, ten hours. Board good. Got hurt after three months. Right foot was hurt by mowing machine. Two weeks ill. Doctor's bill, \$15. Paid it himself. Was young, no company for him, the life was too monotonous on the farm. Working all the time in the fields, wages low, hours long. Quit, although the farmer promised \$30 a month; he could buy calves and pasture them, free of charge, and market them for his own benefit. Perhaps this was a little opportunity for him, but for the reasons stated he left. Went to Denver—westward. Two weeks. Looked for jobs through private employment agencies. Paid for fees \$1.50. Was shipped to Moffat Road; in railway construction camp; \$2 a day, or 20 cents an hour, ten hours; two days. Quit. Got work in a coal mine. Outside night work; \$2.25, nine hours. Mine camp, four or six men slept in each room, two in a bed; dirty mattress, dirty blankets. Lousy. No ventilation, no spittoons. No sanitary rules; no garbage collections. No toilet. One week. Left because of snowstorm. Went westward, beat his way to Salt Lake City. Broke. Two days in Salt Lake City. Asked a fellow in the street where a man without money could get a bed. Slept in a saloon. Begged. Sold his razor. Was shipped out with 800 men to the Western Pacific construction camp in Nevada. On the road two days and two nights without meals. Some fellows ate raw potatoes picked up. Were taken to the end of the new track. Box cars, some with provisions. The men stormed the cars with provisions and took cheese, bread, and a few canned stuffs. He got several cans. Hiked twenty miles into the desert. Wanted to go to the Southern Pacific. Took a train down the line. Got a job on a

construction camp on Western Pacific, \$1.75 a day, ten hours. The board was poor. It was a slave-driving job; lousy bunks in tents; twelve days; quit. Went south into another camp, conditions were slightly better, \$2 a day, better work. Quit. Got sick from cold. No medical aid. Went to California, to San Francisco; 50 cents in pocket; three weeks. Was on Barbary Coast. Hung around the red-light district. Down-and-outs hang around there, for the "sports" (rich people) come there, spend money lavishly. He did begging. Entered a mission called "Whosoever Will." He wanted to have a Christmas breakfast, promised by the mission. About 2000 people had gathered, the street was full; a riot almost occurred. The hungry people were waiting for that breakfast the whole night. He got inside. Got for breakfast rotten fish, could not eat it; two slices bread and coffee—bread was all right. The mission wanted the men to come for dinner, for parading through the streets. He refused, his self-respect was against it. (The men conducting the "Holy Mission" had made \$300,000 out of these poor people through their work, donations, and any kind of manipulation. The mission crooks were afterwards arrested.)

He left for the South to pick oranges; put to work by police on street cleaning in a small town. Worked a day, then told to get out of town. No trial. Went to Los Angeles. A job for the city, pick and shovel, \$2.25 a day, eight hours. Worked five months. Quit—too hot. Went sailing. One year sailing. Got sick. Thought he had consumption, but had only cold. Went to Portland, Oregon. Went to work in Columbia Digger Company, \$50 a month. Board and room were good. Worked eight months as second engineer. No more work. Laid off in the winter time. \$125 saved. Went to Los Angeles.

Joined I. W. W. in Portland. In Los Angeles was elected secretary of this organization, but did not get any pay.

Took part in the Madero Revolution in Mexico. Three months on the battle ground. The command had about 200 men; about half were Americans. It had control over several towns. He did shooting. He is sure he killed one Federal. Was elected financial secretary of a town. No pay. Was handed about \$1900. Bought ammunition. Had machine guns made in Los Angeles. Their command got defeated by Federals who had 1500 men. The command

in which he was fighting lost three or four men. Retreated to the United States, surrendered to the United States troops. He beat his way across the line. Went to Los Angeles. Was hidden there for a time. Went to San Pedro. Got a steam schooner. Went to San Francisco. Then to Portland. Had little money, about \$10. Could steal in Mexico—big money, but did not, the money belonged to his fellow workers. Went to work right away in Portland for the same company as before. Conditions the same. Worked there six months. Job done in winter; \$150 saved. All winter there in Portland. Got a job of dish-washing, \$8 a week and meals, twelve hours, two weeks. Quit—too long hours, not enough money; out of work two months. Got a secret disease.

In 1913 went to a lumber camp near Seattle, Washington, to drive donkeys, \$3.25. Board good. Slept in bunks. One-man bunks in two-layer tiers. Bedding straw, own blankets, vermin. No laundry, washing, bathing, toilet facilities; no screens, no sanitary rules. Worked eleven hours; had one and one-half miles to hike out to the work-place each day. Got up about five o'clock; stopped at five forty-five at night. Worked two weeks. Quit. Long hours. Bad conditions. Went to Portland to work for the same company. Later he worked on a boat of the same company. Joined the new Longshoremens's Union. This fought another union but lost out. Went to work for the Columbia Digger Company. Conditions the same. Work the same. Worked to the first of January, 1914. Got laid off. No work. Took a contract to chop cordwood, 500 cords, \$1 a cord. Spent all his money for tools and provisions and shipment out to the place—spent about \$100. When he, with his partner, got there, they discovered they were cheated by a crooked contractor. No work.

Returned to Portland. Was broke. Partner got \$10 from his father. Took another contract to clear land, two acres, \$50 an acre; and to cut 100 cords of wood, \$1 a cord; got cheated also; the land was harder to clear than the owner told. It rained and snowed also. Left. Did not earn a cent during one and one-half months of work. Were broke, absolutely—provisions all gone, the farmer did not even take their tools to the depot, because he had not time; he really wanted to have their tools. Got another job on a farm, 20 cents an hour to clear land; got potatoes, apples, and milk free. Made about



\$10. Work done. Went to Portland. Beat his way to Seattle. Nothing doing in the woods. In Seattle about a week. Stayed with a friend. Went back to Portland, beat it. Broke. Stayed down on the dredge, even slept there. Went hungry. Went to work for that company—again \$60 a month and own board. Worked until the latter part of May. No work. Laid off. Got another job for another company as a deck hand, \$45 a month; good board; too long hours,—fourteen to fifteen hours, sometimes only four hours for sleeping; slept in the "dog hole." Worked twenty days. Quit—could not stand it. Went to Seattle, June 21; no work in Seattle. Started for harvest in Montana, beating his way. Got ditched lots of times. Paid to carmen, for the tips, from 25 to 50 cents every time. He had some money, bought some stuff. Made tramp "mulligan" in jungles. No jobs in Montana. Thousands of idle men there; you could not even buy a job there. Came to Aberdeen, then to Redfield; ten days here, out of work. Had money for first two or three days. Now about seven days broke. Begging of farmers, asking for work; these give meals anyhow. Sleeps in box cars and haystacks.

Immediate plans: to work here in the harvest fields, then in North Dakota, then elsewhere to save money, to go home to his mother in Denmark, and to stay there more or less permanently.

In Los Angeles lived with a girl for four months as married people; she got \$5 in a department store; he got \$13.50 a week. The best time he ever had in this country. Loved each other. Could not marry. Wages were low; were afraid.

The number of casual laborers is growing in this country. More men are falling into the ranks of down-and-outs than in previous years. Criticizes American Federation of Labor—the form of organization is out of date; most of the leaders are controlled by big employers. Criticizes socialists. They have turned from economic struggle to politics. The socialists are politicians for themselves. In fact they have traded the interests of the working people for the interests of the petit bourgeois.

#### COMMENTS

He is the leader and spokesman of the I. W. W. people and also the harvest hands (about 500) in Redfield. He is quite an intelligent boy, but all signs show that he is going downward. If he

continues to migrate he may become a hobo and afterwards a tramp of the common type. In the jungle of the harvest hands he addressed the crowd. All the men, with a few exceptions, expressed approval of the sentiments of the speech when he called for a show of hands. He did not mention the I.W.W. nor wear an I.W.W. button, and he claimed in private conversation with me that he was not a member. He says that it's too hard to keep up the 50 cents per month dues. Notes taken on his speech are as follows:

The great things that need to be done are to reduce the hours of labor and increase the wages. If the hours of labor are reduced from twelve or ten to eight, more men will be employed and there will be less unemployment. If the hours of labor are reduced enough there will be work for everybody.

You men have got to stand on your own feet and help yourselves. Nobody else will help you—neither Jesus Christ nor anyone else sitting up in the clouds above you can do anything for you. Legislation is bound to fail. What good does the minimum wage law do you? The courts won't stand for such a law being applied to men. Workmen's compensation laws are frauds. If a man gets hurt, what does he get? Only half or two thirds of his wages and that at a time when his expenses are greater than usual. We are not interested in old-age pensions, because we don't live long enough to get old. Labor exchanges won't help much. I've been in England where they have them and where they have old-age pensions, but I never saw such poverty anywhere as I saw in England. We have child labor laws in this country, but they are not enforced. The trouble at Lawrence showed that. Many good bills are introduced by well-meaning men, but before they become law, if they become law at all, they are twisted all out of shape by the pressure from special interests. President Wilson is a good man. I voted for him myself. But what can he do? You men can trust no one but your own leaders, and even your own leaders sell you out sometimes.

We have no interest or hope in political action. Most of us are disfranchised, because we can't stay long enough in one place to get a vote. We have to keep moving to find work. We don't bum our way on the railroads, sleep and eat in the jungles, and wear poor, dirty clothes because we like to do it. We do it because we can't help ourselves. Our only salvation is organization—one big organization of all workers. When we get that we can take the industries we work in and give work to everybody. Ownership does not amount to anything then. But this can't all be done in a day. It will have to be done gradually and you men will have to do it.

"Industrial unrest?" If a man is treated like a dog he's a fool if he don't bark, ain't he? People accuse us of advocating violence. We don't believe in violence except for self-protection. All societies protect themselves against the unsocial acts of individuals. Men are hanged for murder, for example. So we believe that we have the moral right to prevent a man from working for \$2.50 a day when we are fighting for \$3.

P. W. SPEEK

## VIII

### THE MEN WE LODGE<sup>1</sup>

#### I. WHO THEY ARE

TO THE citizens of New York City the homeless man needs no introduction. According to a census made by the New York City Police Department for the United States Bureau of Labor Statistics on the night of January 30, 1915, he was here some 26,000 strong, spending the night in the Municipal Lodging House, at the Farm Colony of the Department of Public Charities, at the Ellis Island Immigration Station, in immigrant homes, in cheap lodging houses, in employment agencies, in missions, in the rear rooms of saloons, in bread lines, and on public thoroughfares. No observing person has walked through our down-town parks, through the Bowery or similar streets, without having at least a passing acquaintance with him.

Withdrawn from the activities and responsibilities of a normal family life, he is not unlike many men who, living in hotels, clubs, and boarding houses, might in the strict sense of the word be called homeless. From these he differs, however, in that his loneliness is often accompanied either by unemployment or by a complexity of disabilities which make him unemployable. He is not only homeless but is often without food, shelter, or money, and in most cases, if a worker at all, he is a casual laborer.

To the citizens who come into closer contact with the homeless man than is afforded in a walk through the Bowery or Union Square, such a description as the foregoing, however, proves inadequate and misleading. An investigation of some 2000 men whom New York City lodged at the Municipal Lodging House in March, 1914, indicated that there is no one type of homelessness, and that

<sup>1</sup>From Report to the Advisory Social Service Committee of the Municipal Lodging House, New York, September, 1915, pp. 9-22.

no two homeless people are alike. Each one is unique in himself: the product of a different inheritance, different environments, and different experiences; the possessor of a different disposition, different capabilities, different habits, different disabilities, and different needs.

The men we lodge at the Municipal Lodging House are as widely different as the transient guests of any New York City hotel. They are as different as the causes which have taken them away from the normal life of society. There are old men over seventy, young runaway boys, orphans, and men who should be in the prime of life. There are strong men, crippled men, blind men, and diseased men in urgent need of hospital care. There are casual laborers who have been idle less than one week, men who have failed in their business or profession, and vagrants who frankly avoid work. There are men who have spent their lives in New York City, and nonresidents and aliens with no legal claim on the city's charity. There are temperate men, habitual drug-users, and inebriates; men who are normally minded, and men who are mentally defective. There are professional beggars and men who hold the beggar in contempt. There are white men and colored men; single men, married men in search of work, and family deserters; Catholics, Protestants, and Hebrews. There is as wide a divergency among homeless men as there is among the rest of mankind.

## II. THEIR CONDITIONS

Given the best will in the world, no effort to deal with homelessness can go very far without facts. When men gather cold and hungry and ragged in a long line outside the Municipal Lodging House, no one can tell offhand by looking at them why they are down and out, or how they can be helped in self-respecting fashion back to the normal life of society.

We need not, however, begin in absolute ignorance, thanks to a very important investigation made at the Municipal Lodging House in March, 1914, under the direction of the Commissioner of Public Charities. Fifteen hundred men were studied at that time by a staff of fifteen investigators. At the same time a medical examination of 2000 men was conducted by fifteen medical examiners. This

investigation represented the first large attempt in America to find out about the men who take refuge in a municipal lodging house.

The facts brought out by this investigation and by others recently made in New York City show that the men who frequent the Lodging House can be classified roughly into two distinct though constantly merging groups; namely, the unemployed and the unemployable. There has been no adequate method perfected for the separation of unemployable individuals from the body of the unemployed which would make possible any sharp classification.

Out of 1426 men who answered the inquiry regarding the length of time they had been unemployed, only 6, or one half of 1 per cent, claimed to be working. All but one tenth of the total, 1274 men, had been unemployed over one week; and 924, practically two thirds, had been out of work for over a month. One hundred and two of the men had been idle over six months.

These figures, of course, refer only to the length of time the men had been idle prior to their investigation in March, 1914. They do not indicate how long the men had been previously employed or how frequent had been the periods of their past unemployment. It should be pointed out, moreover, that this inquiry preceded the more abnormal period of unemployment in the winter of 1914-1915.

The reasons given by the applicants for coming to New York City were tabulated only in the case of those who had been here for six months or less. Out of 417 of these, 306, a large majority, claimed to have come to this city in search of work. While it is necessary to make allowance for probable inaccuracies in many of these claims, they undoubtedly indicate conditions of honest unemployment in the case of a substantial number of men who frequent the Municipal Lodging House yearly.

This conclusion was substantiated by letters received from past employers of many of the men. These letters point out that, in a number of cases, the unemployment of men was due neither to their inability to hold a job nor to their unwillingness to work, but simply to the fact that they could not find work.

The following extracts are illustrative:

(1) *A chemical manufacturer*: "P. F. employed here as a polisher and washer. Work satisfactory. Services not required after busy season."

(2) *An automobile dealer*: "J. I. was honest, reliable, and efficient. He left here on account of the slackness of business. Would reemploy him in our busy season."

(3) *A building contractor*: "J. L. left because our work was completed. We expect to resume work about March 25 and might be able to reemploy him then."

(4) *A bridge contractor*: "C. S. left because of the completion of work. We would reemploy him if conditions were favorable."

(5) *The manager of a skirt company*: "We would reemploy J. M. if work were not so slow."

(6) *A teaming contractor*: "G. K. left my employ because of the scarcity of work. Scarcity of labor in this country has put many a good man on the road without money or food."

These letters bear out a fact that is now well recognized. A United States Census Report of 1910 showed that in the preceding year a total of 117,806 more persons were employed in the manufacturing industries of New York State in January than in October. Such fluctuations in the demand for labor are not confined to one industry or to one season; and occasionally, as in the winter of 1914-1915, they demoralize the entire labor market. Unfortunately, the casual laborer—who all too frequently becomes also the homeless man—is made to bear the brunt of these fluctuations.

Of the 2000 men who were given a medical examination, 1774, approximately 9 out of every 10, were, according to the adjudgments of the examining physicians, physically able to work. Twelve hundred and forty-seven, or 62 per cent of the total, were considered physically able to do regular hard manual labor; 354, or 18 per cent, to do medium hard work; and 173, or 9 per cent, to do light work only. Two hundred and twenty-six, 1 out of every 10, were adjudged physically unable to work.<sup>1</sup>

The results of this investigation show, moreover, that a substantial proportion of the men who apply at the Municipal Lodging House are unemployable—men whose unenviable lot it is to be the less fit in the struggle for survival. Many homeless men, though willing and anxious to work, are chronically unemployed because they are too inefficient to hold a job even under normal industrial conditions. More efficient than these, yet less efficient than

<sup>1</sup> These 226 men do not, however, include all of the unemployables found within this group.

normal workers, are many others, frequently unemployed because they are the first to be dropped from the pay roll when work becomes "slack." Many others, moreover, are unemployable because, being neither anxious nor willing to work, they frankly avoid employment.

The factors behind the inefficiency of a man have usually imbedded themselves so far into his past that a clean-cut dissection of them is practically impossible. No such experiment was attempted in this Municipal Lodging House investigation. Certain conspicuous factors, however, were frequently found contributing to the inefficiency of the men investigated. These fall naturally around six distinct though constantly merging groups of inefficient homeless men. They are (1) the physically handicapped, (2) the mentally handicapped, (3) the inebriate, (4) the habitually idle, (5) the untrained, and (6) the aged.

Of the 2000 men who were examined by the physicians, 226, or 11 per cent, were adjudged physically unable to work; 80, or 4 per cent, were temporarily disabled, and 146, or 7 per cent, were permanently disabled. Fifty-nine of the 2000 men had disabilities which demanded hospital treatment, and 239 of them were recommended for dispensary treatment. The leading factor physically incapacitating men for work was tuberculosis; others were senility, nephritis, heart disease, acute pleurisy, and blindness.

That a number of the homeless men included in this investigation were mentally defective and in that respect unemployable is evident from a study of the records of some 200 who were examined by the Clearing House for Mental Defectives. The following extracts from the records of some of these men are illustrative:

*No. 90.* A laborer, age twenty-four, had spent his life in New York City. "Patient presents a very simple, foolish attitude; he has no judgment, does not reason, and has absolutely no purpose in life. He does not care to work but begs and bums his way. He has no friends and is a recluse. He is mentally defective." He had served a six months' sentence on Blackwell's Island for vagrancy.

*No. 1152.* A laborer, age fifty, had been in the United States twenty-five years and in New York City fifteen years. He was diagnosed as an imbecile. He had never held a job for over six months, working only long enough to get money with which to become intoxicated.



Of 1482 men who made statements regarding their habits, 1292—approximately 9 out of every 10—said that they drank alcoholic liquors. Six hundred and fifty-seven, or 44 per cent, said that they drank excessively; 635, or 43 per cent, said that they drank moderately; and 190, or 13 per cent, claimed to be total abstainers.

Of the 2000 men who were given a medical examination, 775, or 39 per cent, were diagnosed as suffering from alcoholism. According to Dr. James Alexander Miller, these "figures probably do not represent by any means the number of individuals who were alcoholic . . . but are rather indicative only of the number who manifested acute evidence of that condition at the time of the investigation." Not infrequently were responses from past employers of these men such as are here quoted:

"His failing was drink. I would not employ him again."

"He used intoxicating liquor to such an extent as to hinder his work."

"Drink interfered with his work. If he could keep away from liquor, he would be O. K."

"Discharged for drunkenness."

Of the 102 men who had been unemployed over six months, 50—approximately 1 out of every 2—had been idle one year or over. The means by which they lived is indicated in the answers of 1482 of the men investigated. Of this number, 317—1 out of every 5—admitted that they begged either occasionally or regularly.

Some of these men had degenerated through repeated periods of idleness into a voluntary state of unproductiveness and parasitism. Others were unemployed, apparently, because they had never disciplined themselves to obey orders. Others, moreover, were unable to keep their minds on their work, either because they were obsessed with an idea that they were more fit for something else, perhaps in a different city or state, or because some misfortune, such as the loss of a friend, had left them without the initiative and the purpose which had made their work worth while.

Given a well-stocked market of unskilled laborers, the less fit—those handicapped by some physical or mental defect—are, obviously, forced either to look to other sources than to unskilled labor for their livelihood or to become dependent. Unfortunately they are

all too often forced to choose the latter alternative, because they lack the training required for positions which they might otherwise capably fill. The records of this investigation show that a number of the men interviewed could have been self-supporting if they had been trained in some occupation which they were physically and mentally able to carry on. Such statements as the following were not infrequently received from past employers of these men :

"Get suitable work for him."

"Might be all right in the right place."

"He should have better education in the trade."

Even in a Utopian society one might expect to find a certain number of old people among the unemployable. Although most of the men included in this investigation had left the ranks of industry for causes other than old age, the examining physicians found senility, next to tuberculosis, to be the largest single factor leading to permanent physical disability. Out of 146 permanently disabled men, 14—1 out of every 10—were unable to work on account of old age.

It was found, moreover, that of 1467 men who gave their ages, 115—1 out of every 13—were sixty years of age or over. Eleven of the men were seventy or over.

Physical disability, retarded mentality, inebriety, habitual idleness, lack of training, and old age,—these are some of the factors frequently found contributing to the inefficiency of these men. Perhaps in no single instance does any one of them appear alone. In many, several are found in various combinations. With the exception of old age, each of these factors augments and is augmented by the others, and all of them contribute jointly to the production of a group of dependents, more or less unemployable, who are the city's recurrent guests at the Municipal Lodging House.

This investigation, moreover, revealed the fact that among the lodgers at the Municipal Lodging House were many men who had no legal claim upon the city's hospitality. According to the state charities law, at least one year in residence is required before a person can become a legal resident of New York City, which alone would make him a bona fide legal claimant of the city's charity.

Of the 1429 men who stated the time they had been in New York City, 588—2 out of every 5—had not been here over one year,

while 322—1 out of every 5—had not been here over two months. One tenth, or 141, of the men had not been here over ten days. Some of these men were residents of other counties and states; some were aliens, and some were runaway boys.

Of the 1448 men who stated their birthplace, 621, or 43 per cent, were foreign born. Thirty-six of these men had not been in the United States over one year, and 74 had not been here over three years. There were, moreover, 304 applicants at the Municipal Lodging House in March, 1914, who were rejected from this investigation because they could not speak English. Had these men been included, these numbers would have been much larger.

The federal government has the power of removal of an alien improperly admitted to the United States, but this power ceases after he has been in this country three years. The law of New York, however, gives the State Board of Charities unlimited authority for the removal of alien and nonresident poor. The law reads :

The State Board of Charities, and any of its members or officers, may, at any time, visit and inspect any institution subject to its supervision to ascertain if any inmates supported therein at a state, county or municipal expense are state charges, non-residents or alien poor ; and it may cause to be removed to the state or country from which he came any such non-resident or alien poor found in any such institution. (State charities law, constituting Chapter 55 of the Consolidated Laws, Section 17.)

According to the secretary of the State Board of Charities, however, it is the policy of that body to return nonresident and alien-poor inmates of the Municipal Lodging House only in very exceptional cases. "In the first place," the secretary states, "the board doubts the wisdom of returning them generally, and in the second place it does not have an appropriation sufficient for the purpose."

Following are extracts from the records of some of the nonresident and alien applicants among the men investigated at the Municipal Lodging House in March, 1914, who were subject to removal from the state under the law :

*No. 992.* An English seaman, age sixty-three, had been in the United States and in New York City eight weeks, during which time he had been idle. He had been discharged from a ship while in this port because of a broken thigh.

*No. 1258.* A resident of Massachusetts, age twenty-seven, had been in New York City five weeks. Except for a few jobs at snow-shoveling, he had been idle during this entire time. His brother wrote that the man had a home in Massachusetts.

*No. 1337.* A resident of Pennsylvania, age twenty-three, had been in New York City one day. In that state he had been an inmate of a penal institution for one year. A past employer wrote that he thought the man was mentally defective. His father wrote, "I hope he will soon return home."

*No. 1377.* A German candy-maker, age twenty-seven, had been in the United States and in New York City two years. He had been at the Municipal Lodging House ten times in January, 1914, and had served a thirty-day sentence at the workhouse.

Of the 1467 applicants giving their ages, 26 were boys under nineteen years of age, and 48 were under twenty-one. Eleven of these boys were foreign born; 16 were native born of foreign parentage; and 20 were native born of native parentage. That a number of them had run away from their homes was shown by their own statements and by letters from their friends and relatives.

*No. 325.* An American boy, age nineteen, came to New York City "to see the town" two months prior to his application at the Municipal Lodging House. His father wrote from New Orleans that the boy had run away from a good home there. He asked to have the boy returned.

*No. 363.* A New York City boy, age nineteen, had run away from his grandfather's home in the Bronx. The grandparent wrote that he had given the boy a good home, but that he had run away.

*No. 1071.* An American boy, age seventeen, had "bummed" his way to New York City four days prior to his application at the Municipal Lodging House. He had run away from his aunt's home in Washington, D. C., to visit a sister in New York, whose address he did not know. His aunt wrote, "Send him to me at once."

### III. THEIR NEEDS

The need for food and shelter is practically the only one common to all of the men who apply at the Municipal Lodging House. It is a need, fortunately, which the city can meet en masse by the provision of so many beds, so many loaves of bread, so much soup, so many cups of coffee, so many bowls of cereal, so much milk, so much sugar, a building for the housing of these supplies, and a force of employees for their administration.

But have the needs of the lodgers been met when they have been fed and given a night's lodging? Is this common need the greatest need presented by all or by any one of them? Obviously it is not. They need food and shelter because they lack the means of self-maintenance. They lack the means of self-maintenance either because they cannot find a job or because they are handicapped by physical and mental abnormality, by inebriety, habitual idleness, lack of training, or old age and are therefore unable to hold a job when they find one.

From the facts brought out in these investigations, it is obvious that any constructive program for meeting the needs presented by the homeless must be directed toward all of their disabilities. The whole man must be treated, not merely his appetite and his desire for sleep.

Food and shelter may be the individual's greatest need. In most cases, undoubtedly, it is not. It is but a symptom of another need—the need of a job, or the need of constructive treatment for those disabilities which keep him from a job.

Every man who applies for food and shelter at the Municipal Lodging House should have a social investigation as well as a physical examination in order that an intelligent diagnosis of his condition can be made. Facts can thus be obtained which will serve as the basis for an intelligent plan for his treatment.

The old method of lodging the homeless man and passing him on or imprisoning him; of giving him work in a wood or stone yard or directing him to the nearest employer, with little regard for the complicated causes of his condition and less for the opportunity of developing within him the power of self-maintenance,—the old program has been wasteful, wasteful of men and wasteful of the city's charity fund.

Each homeless man who applies at the Municipal Lodging House needs individual attention. Otherwise he would not be there. Behind his need for food and shelter are basic needs which demand intelligent diagnosis and treatment. The employable man without a job needs to be directed toward a job without a man—a job for which he is fitted. The unemployable man needs either to be treated for the causes of his dependency, to be protected from the competition of the more fit, or to receive both such treatment and protection.

The physically handicapped need to be healed as far as is within medical and surgical power to heal; the mentally handicapped need to be segregated, protected, and trained; the inebriates need to be restored to health and disciplined for rational living; the habitually idle need to be constrained (or compelled) to work; the untrained need to be directed toward an occupation at which they can earn a livelihood and be trained for self-support; and the aged need to be placed in homes. Dependent nonresidents, aliens, and runaway boys need to be returned to their homes and to their friends. If agencies for meeting these needs were maintained and coördinated in the Municipal Lodging House as a central clearing house for the homeless, that institution would serve as an avenue of approach not only to a meal and a bed, or perchance to prison, but to rehabilitation.

ROBERT B. BROWN

## IX

### INTERSTATE MIGRATION OF NEGRO POPULATION<sup>1</sup>

FOR a clear understanding of the northern migration of negroes in the years 1916 and 1917 a knowledge of the general movement of the negro population since 1865 will prove very useful. Several recent writers have been prone to emphasize the development in the negro within the past two years of "a sudden desire to move," but a little investigation soon reveals the fact that the black man, ever since the day of his emancipation, has shown a tendency to migrate.

At the close of the Civil War, when told that he was free, the negro at once began to put his freedom to the test ; and as the most palpable evidence of his liberty was his ability to come and go as he chose, it was only natural that he should begin to move about. At the end of every year thousands of tenants in the Southern black belts may still be seen removing to other farms, in many cases without even taking the pains to examine beforehand the lands they are to cultivate or the houses they are to occupy. Such migrations do not appear in the census returns, but their social and economic importance is far-reaching. Dr. Booker T. Washington often found it necessary to urge his people to abandon their moving propensities and to settle down and acquire property. At gatherings of negro farmers he was fond of narrating a homely story of a chicken which belonged to one of these peripatetic tenants and which, from long-acquired habit, would walk up to its owner's cabin door on every first of January and squat down and offer its legs to be tied, preparatory to its journey to the next farm.

The possibility of the migration of a great number of freedmen from some sections of the South became evident almost as soon as the Civil War was over, and as early as November 27, 1866, Governor James L. Orr, of South Carolina, stated in a message to the legislature that the negroes were—

<sup>1</sup>From *Journal of Political Economy*, Vol. XXV (1917), pp. 1034-1043.

invaluable to the productive resources of the state, and if their labor be lost by removal to other sections, it will convert thousands of acres of productive land into a dreary wilderness. For this reason, I have felt it to be my duty to discourage their migration. The short crops of the present year should stimulate the planter and farmer to renewed energy and enterprise. He will, however, find his lands of little value if he cannot command labor to cultivate them. If the negro remain here, his labor must be made sufficiently remunerative to subsist and clothe him comfortably. Schools must be established to educate his children, and churches built for his moral training.<sup>1</sup>

This threatened migration, to which Governor Orr referred, was a westward movement, from South Carolina, Georgia, Alabama, and Mississippi to Louisiana, Arkansas, and Texas. It differed materially from the later migration to the North. In general, the westward movement in our country is actuated by causes similar to those that prompt European migration to America. It is a movement from a highly developed, densely populated region, where the economic stress is acute, to a region more sparsely populated, with undeveloped resources, where the struggle for existence is not so keen. This explains the lure of the Southwest for the negro, as well as that of all the West for the white man. But there is another movement of population that operates in a manner quite the reverse of the principles just enunciated. This is the cityward movement, a migration to a region of denser population, keener competition, and more acute economic stress. Such a movement is the Northern exodus of negroes in 1916-1917.

In the late sixties and early seventies the westward migration of negroes attained considerable headway. It was at first a movement of individuals and soon became one of groups. Railway and land companies carefully fostered it and had their agents in various sections of the South, very much as transatlantic steamship companies have maintained their runners in the remote rural districts of southern and eastern Europe to encourage emigration to America. A well-known negro educator states that in 1874 he heard one of these agents boast that he had induced 35,000 persons in South Carolina and Georgia to leave for Arkansas and Texas.<sup>2</sup> This westward movement,

<sup>1</sup> South Carolina House Journal (1866), pp. 20-21.

<sup>2</sup> W. H. Crogman, *Talks for the Times* (Atlanta, 1896), p. 54. The agent's statement is probably much exaggerated, but there must have been a considerable migration to have prompted him to make such a claim.



however, was soon dwarfed into insignificance by a threatened migration on an unprecedented scale to Kansas from the lower Mississippi Valley early in the spring of 1879. The "Kansas Exodus," as it came to be called from its alleged resemblance to the flight of the Israelites from Egypt, presents several striking analogies to the movement of 1916-1917. When the exodus to Kansas began, there was the same suspicion, as noted in 1916, that it was the result of efforts to colonize negro voters in the North and make certain states safely Republican. In both cases this suspicion was finally allayed. There were also, in 1879 as in 1916, the assumption by a portion of the Northern press that the negro was fleeing North to escape ill treatment, and the tendency on its part to lecture the South for its shortcomings in dealing with the black man. One may also note, in both instances, the same sort of uneasiness among the planters in those districts from which emigration had been excessive, the same assurance by some that all of the negroes would eventually return, and the same introspective editorials in Southern newspapers, with the candid admission that conditions might be better for the negro, but with the added assertion that even as things were the South was a better place for him than the North. In both instances also may be observed the final recognition that the causes of the movement were basically economic. Of course, there are certain contrasts as well as parallels in these two movements, but the latter appear to be by far the more significant.

The Kansas movement of 1879 was due in large measure to the agricultural depression in the lower Mississippi Valley, but it was precipitated by the activities of a host of petty negro leaders who sprang up in all parts of the South during the period of reconstruction. Foremost among these were Benjamin (better known as "Pap") Singleton, of Tennessee, and Henry Adams, of Louisiana. Singleton styled himself the "Moses of the Exodus" and personally supervised the planting of several colonies in Kansas.<sup>1</sup> Adams claimed to have organized a colonization council which attained a membership of 98,000.<sup>2</sup>

The exodus to the "Promised Land" of Kansas began early in

<sup>1</sup> W. L. Fleming, "'Pap' Singleton: the Moses of the Colored Exodus," *American Journal of Sociology*, Vol. XV, pp. 61-82.

<sup>2</sup> Senate Report, 693, Part II, 46 Cong., 2 Sess.

March, 1879, and continued until May. The total number of emigrants, most of whom went to Kansas from Louisiana and Mississippi, has been estimated at all the way from 5000 to 10,000, and many thousands more had planned to move, but were deterred by the misfortunes of those who constituted the vanguard. Leaving their homes when the weather was becoming warm, the early emigrants reached Kansas when spring chanced to be unusually backward and the country was still bleak and desolate. Thinly clad and often without funds, they endured much suffering from want and sickness, and many of them became public charges. Societies were organized expressly to care for the "refugees," as they were called, and large numbers returned to their homes as soon as they were able, giving such dismal reports on their arrival as to dissuade others from following their example. Perhaps a third of the emigrants remained, and many of these eventually attained a fair degree of prosperity.

The movement was ill-advised, and too much based on the negro's sentimentalism. To him Kansas, pictured as the home of John Brown and the scene of many free-soil victories, seemed to be the ideal home for the black man. But he found on arriving a harsh climate, pioneer conditions, and small farmers who had no need of extra laborers and who were not especially friendly to the negro. That individuals from among this group of emigrants could surmount such difficulties and attain no small degree of well-being is to the credit of the race. While the exodus caused much suffering, demoralization, and loss of property among the emigrants, it seems to have had at least one good result. In some instances it is said to have caused an improvement in the condition of the negroes who remained at home. In communities where there had been considerable emigration there was said to have been a tendency to reduce rents and to offer the remaining tenants more favorable terms in general than had obtained prior to the exodus. Such a result would naturally be expected.

In 1888-1889 there was a considerable migration of negroes from southern Alabama to Arkansas and Texas, as a result of the activities of labor agents.<sup>1</sup> The rapid development of the mining industry of Alabama in the nineties caused a rapid influx of negroes into the mineral regions around Birmingham and was the cause of much

<sup>1</sup> *Southern Farmer*, Atlanta, Georgia, June, 1889.

uneasiness among the cotton growers of the black belt. The advent of the boll weevil caused a great migration of colored farmers in 1908-1909 from the cotton fields to the cane fields of Louisiana. By 1914 the cotton belt of this state had recovered from the demoralization that followed the advent of the weevil; and the sugar planters, depressed by the prospects of free sugar, were reducing their acreage and employing fewer laborers. A tendency toward a counter migration then showed itself, and labor agents again were active.<sup>1</sup>

These instances are cited in order to indicate that the Northern migration of 1916-1917 is no new and strange phenomenon. It differs from earlier movements chiefly in the matter of numbers involved. The European war has simply hastened and intensified a movement that has been under way for half a century. To the truth of this statement the reports of the census bear eloquent witness. In 1860 there were 344,719 negroes in the North; in 1910 there were 1,078,336, an increase of 212.8 per cent for the fifty-year period. In the South for the same period the rate of increase was 111.1 per cent. In the last half century, therefore, the relative increase of negroes in the North has been nearly double that in the South. This shows a decided change from the conditions prevailing before the Civil War. At every census before 1860, except that of 1840, the negro population of the South showed a greater relative increase than that of the North. Since 1860, however, the situation has been reversed, as is indicated by the following table:

PERCENTAGE OF INCREASE OF NEGRO POPULATION

DECADE	NORTH	SOUTH	DECADE	NORTH	SOUTH
1790-1800 . . .	24.1	34.0	1850-1860 . . .	20.3	22.1
1800-1810 . . .	18.7	39.2	1860-1870 . . .	[33.3]*	[8.8]*
1810-1820 . . .	18.0	29.5	1870-1880 . . .	[36.5]*	[34.7]*
1820-1830 . . .	29.2	31.6	1880-1890 . . .	16.2	13.5
1830-1840 . . .	38.9	22.2	1890-1900 . . .	25.1	17.2
1840-1850 . . .	23.7	26.8	1900-1910 . . .	18.3	10.4

\* Owing to the great irregularities in the census of 1870, especially as it relates to the Southern states, comparisons of this year with those of 1860 and 1880 are wholly misleading, and in the foregoing table the percentages for these years are bracketed.

<sup>1</sup>New Orleans *Times-Democrat*, March 26, 1914.

It thus appears that in every decade since the Civil War the negro population of the North has been growing faster than that of the South. This increase can be accounted for in two ways only: by an excess of births over deaths and by immigration from other states. The meager vital statistics available indicate that while the death rate of the negro in the North is lower than that of the negro in the South, the birth rate of the Northern negro is also lower and is just barely sufficient to balance the death rate. The increase in the colored population of the Northern states appears therefore to be due almost wholly to immigration. The census fully substantiates this assumption. In 1910, 415,533 Northern negroes were Southern born. This is nearly two fifths of the entire negro population living in the North. Forty-seven per cent of the negroes living in New England in 1910 and more than 50 per cent of those in the Middle Atlantic and East North Central divisions<sup>1</sup> were born outside these sections. In four of the former slave states (Maryland, Missouri, Kentucky, and Tennessee) there were actually fewer negroes in 1910 than in 1900. These, it will be noted, are border states, where "the call of the North" is most likely to be first heard and heeded, and whence migration is easier and cheaper than it is farther south. It is also worthy of note that every one of the former slave states except Arkansas was "whiter" in 1910 than in 1900.<sup>2</sup> Indeed, if we exclude from our reckoning states having a negro population of less than 2 per cent, the only states in the Union that became perceptibly "blacker" in the last census decade were West Virginia, whose percentage increased from 4.5 to 5.3, and Oklahoma, whose increase was from 7 to 8.3 per cent. The increase in these states, however, is not large enough to give rise to problems like those in some sections of the old South.

It is interesting to note that the New England states, before 1910, were not appreciably affected by the Northern migration. In three of these states (Connecticut, Rhode Island, and New Hampshire) the percentage of negro population between 1880 and 1910 actually

<sup>1</sup> The Middle Atlantic and East North Central divisions comprise the states of New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, Michigan, and Wisconsin.

<sup>2</sup> While the percentage of negro population in Arkansas increased, it was only to the extent of one tenth of one per cent.

declined, in Maine it remained stationary, and in Vermont and Massachusetts it showed a very slight increase. New Hampshire actually contained fewer negroes in 1910 than in 1790.

Another very interesting feature of the movement of negroes in the United States is the fact that, in spite of the northward tendencies just described, the center of negro population has been shifting steadily southward and westward. Since 1790 the center has changed from southern Virginia to northeastern Alabama. This is due to the fact that the drift of negro population to the North before 1910 was most pronounced in the border states of Tennessee, Kentucky, Maryland, and Missouri, and that the increase in the states farther south more than offset the losses in these four states.

The negro shows a tendency not only to move northward but also to move about very freely within the South. In fact, the region registering the largest net gain of negroes in 1910 from this interstate movement was the West South Central division. (Arkansas, Louisiana, Oklahoma, and Texas), which showed a gain from this source of 194,658. The Middle Atlantic division came second with a gain of 186,384, and the East North Central third with a gain of 119,649. On the other hand, the South Atlantic states showed a loss of 392,827, and the East South Central states a loss of 200,876 from interstate migration. While the negroes have shown this marked inclination toward interstate movement, they nevertheless exhibit this tendency in less degree than do the whites. In 1910, 16.6 per cent of the negroes had moved to some other state than that in which they were born, while the percentage for the whites was 22.4. For the relative extent of intrastate migration by the two races, figures are of course unavailable.

As has already been indicated, the cause of the migration, like that of practically all great movements of peoples, is fundamentally economic. But this simple statement does not tell the whole story. The causes may be grouped as *beckoning* and *driving*, the first group arising from conditions in the North and the second from conditions in the South. Among the beckoning causes in 1916-1917 were high wages, little or no unemployment, a shorter working day than on the farm, less political and social discrimination than in the South, better educational facilities, and the lure of the city. Among the driving causes were the relatively low wages paid farm labor, an

unsatisfactory tenant or crop-sharing system, the boll weevil, the crop failures of 1916, lynching, disfranchisement, segregation, poor schools, and the monotony, isolation, and drudgery of farm life. There is a noticeable tendency on the part of some negro leaders to attribute the movement chiefly to the unrest due to mob violence and other ills, social and political, that fall to the lot of the black man. When we note, however, that lynching for the past twenty-five years has been slowly but surely decreasing and that disfranchisement is no new thing, but has been an accomplished fact for more than forty years, it becomes evident that, whatever grievances of this nature the negro may have against the South, he has at least no *new* complaint and therefore no stronger reason for migrating on this account in 1917 than he has had for several decades. If adverse social and political conditions are the main cause of the Northern migration, it is asked, why did the negro not go in the eighties and nineties when lynchings were four times as frequent as they now are and when disfranchisement was effected by "bulldozing" and tissue ballots rather than by the more peaceful method of constitutional amendment? The answer to this question is that the negro has no greater grievances now than formerly, but that he has a much better opportunity for escaping these grievances than he has had heretofore. The driving causes in the South are not of themselves sufficient to bring about such an exodus as was recently observed. There must be an avenue of escape to apparently better conditions, and this was presented when the European war created a vacuum in the Northern labor market.

The effects of this interstate migration, like the effects of late foreign immigration, are largely matters of the future. But certain postulates with regard to the immediate effects may be readily formulated. So far as the migrations tend to bring about an equilibration of demand and supply in the labor markets of this country, the effect will be beneficial. The abundance of crude, cheap, and easily managed labor in the cotton belt has not been an unmixed blessing. It is a well-established fact, too, that the negro does better in those districts where he is greatly outnumbered by the whites than he does in the black belts where he has little chance to study and emulate the white man's skill, thrift, and energy. The negroes who go North may thus increase their own productive capacity and, at the same time, by relieving somewhat the congestion of black folk in their old

homes, may improve the economic status of their neighbors who remain behind. A migration of negroes in any number is likely also to affect the attitude of the Southern employer of colored labor. It will tend to impress him with the idea of the black man's economic value as he had not been impressed before. The exodus of 1879 effected such a change of attitude on the part of the Mississippi River planters. A large number of them assembled in Vicksburg on May 5, 1879, and solemnly resolved "that the colored race has been placed by the Constitution of the United States, and the states here represented, on a plane of absolute legal equality with the white race," and "that the colored race shall be accorded the practical enjoyment of all rights, civil and political, guaranteed by the said constitutions and laws."<sup>1</sup>

The migration has also its debit side. As already stated, it is a cityward movement of a rural population, and as such is attended with all the difficulties and dangers incident to such a movement on the part of any people. But there are additional difficulties when the newcomers to a city—even a Northern city—chance to be colored. They must live in the least desirable part of the town, on filthy and neglected streets, and in poorly constructed, insanitary dwellings, for which they must frequently pay exorbitant rentals. There may be the additional handicap of industrial discrimination on account of race.

Dr. W. H. Crogman, of Clark University, Atlanta, Georgia, a well-known negro educator, twenty years ago set forth the evils of this movement in the following words:

Nothing was ever clearer to my mind than that this interstate migration has in it the seeds of moral death. It is a very Pandora's box. It strikes at the roots of those things by which only any people can hope to rise. It destroys the home wherever it is established, and prevents its establishment where it is not. It retards the progress of education and acts like a withering blight upon the influence of the churches. . . . Over and over again have I known persons to leave their native state and after wandering through several others to return finally to the very spot whence they had started, having in that time gained nothing, acquired nothing, except that which is a property common to all bodies once set in motion—a tendency to keep moving.<sup>2</sup>

<sup>1</sup>*Vicksburg Daily Commercial*, May 6, 1879.

<sup>2</sup>Talks for the Times, pp. 253-254.

This statement, in the light of later developments, appears unduly pessimistic, and would probably be modified by its author today ; but the fact cannot be gainsaid that the mere removal of the negro to another environment is not the ultimate solution of what we call the "race problem"; at the most it can only modify the problem. As the European peasant does not escape all his economic ills when he stands for the first time under the Stars and Stripes, so the negro will still have his troubles after crossing the Mason and Dixon line.

WILLIAM O. SCROGGS

LOUISIANA STATE UNIVERSITY



## X

### A CLEARING HOUSE FOR LABOR<sup>1</sup>

#### I

WE LACK labor. The railroads are crippled for want of it. The farmers hesitate to plant seed for fear they cannot get labor for the harvest. Factories, public utilities, ammunition factories, shipyards, send up a cry for men. Strangely enough, tens of thousands of men walk the streets of our cities in idleness in the midst of the labor shortage. Appeals to patriotism apparently go unheeded. High wages, instead of attracting them into steady employment, lead only to more frequent periods of idleness. They profiteer in the nation's day of stress as willingly as many of their employers. Neither impairment of our military efficiency nor the sufferings of millions who lack the necessities of life move them. What is the explanation? Why this anomaly? Why a labor surplus in the face of a labor shortage?

An explanation which at least points to one important cause of the phenomenon is this: labor is standing idle during a labor shortage because an unorganized labor market has impaired the efficiency and morale of hundreds of thousands of workers. Men have become accustomed to idleness, unaccustomed to sustained efforts. Irregularity of employment, migration from industry to industry, the cheap lodging-house, the saloon, pawnshop, brothel, municipal police court, and lack of continuing responsibilities have done their deadly work. Men who started out with ambition and promise have degenerated into inefficient, irresponsible, migratory laborers—tens of thousands of them into almost unemployable “bums.”

Labor is not scarce in America so far as quantity is concerned. I question the probability of any quantitative shortage of labor during the war. If such shortages should occur, potential supplies of female and minor labor will fill up the gap. But labor of *quality*

<sup>1</sup> *Atlantic Monthly*, Vol. CXXI (1918), pp. 773-783.

is scarce in every manual occupation—in agriculture, mining, forestry, manufactures, transportation; and there is no reservoir from which that quality shortage can be relieved. Our hope for relief rests solely in such mobilization as will place the existing skilled labor where it will do the most good, in subdivision and specialization of tasks so that partly skilled persons may be able to perform them, and in intensive training of promising young workers for such work as they can be prepared for during the emergency.

One of the most striking phases of the labor shortage is the scarcity of good common labor. Anyone knows that an employer who needs a machinist cannot use a casual laborer. It is not difficult to realize that a farmer who needs a dairyman cannot use a harvest-hand. But many people do not yet appreciate the fact that there are different classes or types of common laborers, just as there are different classes of mechanics. Degrees of reliability, intelligence, steadiness, and physical efficiency are of just as great importance among common laborers as degrees of skill among mechanics; and the presence or absence of these qualities means the presence or absence of ability to *earn* wages.

The shortage of competent American labor is not simply a war shortage. A considerable portion of our skilled labor supply has always come from Europe, and a relative decline in the emigration of skilled laborers to America has been the mainspring of our interest in industrial education in recent years. Everyone familiar with the labor market has known likewise that the Italian and Slavic immigrants from southeastern Europe have furnished us with our principal supply of common laborers during the past two generations, and that American common laborers have been, on the whole, of declining value.

The shortage is no new one. But Europe has heretofore protected us against the pressure of our lack. The war, with its stoppage of immigration, contemporaneous with a sharp increase in the demand for American products, raw and manufactured, suddenly made the shortage acute. It twisted the tourniquet. We suddenly became conscious that we were no more independent of Europe's birth rate than we were of her dyes. We need labor now. After the war, when millions of Europeans will have died in arms or been crippled in action, will immigration relieve our shortage again? If it would, is

it sane public policy to permit conditions to continue which destroy the efficiency of hundreds of thousands of men, simply because we can find others to take their places? Will a nation that is willing, if necessary, to lay down the lives of millions of men and billions of treasure to "make the world safe for democracy" allow social arrangements to continue which condemn whole armies of men to economic inefficiency and moral deterioration?

One of the principal reasons why uncounted thousands of American laborers are of such low quality that employers do not "want to give them standing room," and prefer the immigrants, is a disorganized labor market. Erroneous labor policies stimulate labor turnover and labor migration and result in a progressive deterioration of the laborer. We educate them for inefficiency instead of efficiency, and train them in shifting instead of in sticking; we discourage self-respect, encourage thriftlessness, and compel continuous movement. If we had set ourselves to devise ways and means of destroying the efficiency of American labor, we could not have chosen methods better suited to our purpose than the conditions characterizing our present labor market. Constant labor turnover and constant labor migration will demoralize a working force as rapidly as it can be accomplished.

I am not ignorant of the fact that many personal causes contribute heavily to labor inefficiency. No man can watch the flow of migratory labor through any distributing point, like Minneapolis, without witnessing tragedies of drink, of drugs, of feeble-mindedness, of bad home training, of defective education, and of moral failure that wring his heart. But contact with tens of thousands of laborers of every type and description has forced the conclusion upon me that the moral failure of a very large percentage of these men is the result of the industrial and social conditions that surround them rather than of initial viciousness on their part. Initial personal fault accounts for some of them. But economic conditions beyond their control or understanding account for more. They are victims of drink, vice, drugs, and women largely because the nature of their work prevents a normal home life, normal community life, normal citizenship.

You are familiar with common laborers. You see them daily, standing on street corners, riding in street cars, sweating in excavations, loafing at saloon or pool-room doors. You have probably

hired them at one time or another. You may have shared their life. But have you ever really become acquainted with them? Do you know where the common laborer comes from, what his experiences are, what becomes of him, what his types are? Or is he one of those commonplace experiences that you are so familiar with that you do not really know anything about him? You know that there are more than a dozen different kinds of machinists, and that different kinds of carpenters have different types of skill which bring varying rates of pay. Do you realize also that there are at least five distinct classes of common laborers, varying in skill, in the kinds of work they follow, in productive capacity, in earning power, in social significance?

## II

I was in a gas-retort house one night in Oshkosh, Wisconsin. It was the hour for drawing the coke and recharging the retorts. Three stokers opened the little retort doors and drew the red-hot coke out on the floor. Then, standing twelve or fifteen feet away from the red-hot open retorts they threw from 400 to 600 pounds of coal, with scoop shovels, into openings twenty-one inches wide and fourteen inches high and filled nine retorts without letting a single piece of coal fall on the floor. They were common laborers. They worked twelve hours a day and seven days a week. Their job consisted simply in drawing coke, cleaning retorts, and shoveling coal into the retorts. But they had the skill of men who had thoroughly learned a job, who had developed an expert skill in that job, who remained steadily on the job. They were a part of that plant. But more than that, they were heads of families, citizens of Oshkosh, integral parts of the economic, political, and social life of the nation.

Here is the first and highest type of the common laborer: the man who is a part of an industry, who has an occupation, who is a citizen in a community, is the father of a family, perhaps a member of a lodge, a club, or a church. You find this man by the million in our industrial and social life. He runs the bulk of our simpler machinery, operates our street cars, furnishes our watchmen, janitors, and a thousand other kinds of steady help. Upon his shoulders rests a heavy portion of our social fabric. He represents no social problem so long as he can maintain this status—except the problem

of an income inadequate to provide his family with a safe subsistence and a dependable future. Probably four out of every ten workmen are found in this category.

But this is not the only type of common laborer who is a permanent factor in the life of the community. A second important type is the man who works irregularly, who has a continuous succession of employers. He works for a while for contractor Jones, then for Smith, then for Brown. He gets a temporary job in a factory, then in a brickyard, and next in an excavation. At his best he is a man with a family—struggling for existence. His wife commonly assists in the bitter struggle by keeping boarders, or by doing washing or sewing; his children are found at the workbench as early as the law allows, and high-school education is not a thing that his family can think about. In a somewhat lower variation of the type we find this family intermittently on the rolls of the charities, whenever two or three weeks of continuous unemployment, a sickness, or other slight calamity assails them. In a third variation we find a single man living in cheap boarding houses and generally deteriorating steadily under the influence of drink and irregular habits. The struggle for existence of the married man of this last class is harder, more bitter—but he has more to fight for.

The distinction between this general group of laborers and the one first described is found in the relative steadiness of the first group's employment and the relative unsteadiness of the second's. One works for the same employer for considerable periods of time; the other changes employers frequently. Individuals of the first group frequently pass into the second group, when they lose their steady jobs and are unable to get others. Individuals of the second group sometimes pass into the first group by fortunately dropping into a steady job.

To some this may seem a flimsy basis for classification. It seems somewhat vague, leaving a middle ground, a twilight zone, where a considerable number of people lie in either group, or both, or sometimes in one and sometimes in the other. But it at least has the merit of conforming to life, and it calls attention to two types whose life experiences differ considerably. The members of the group with steady employment are never far from destitution. They are poor, very poor. They have a hard time to make ends meet. They commonly have to take their children out of school by the time that they

are sixteen years of age. A period of unemployment, a bad sickness, or other misfortune will quickly bring them to the point where they must have help. But ordinarily they are making ends meet. The wife or children may have to earn part of the living, but the family is self-supporting, and as it looks ahead it sees a prospect of steady income and of continuing self-support. It has a certain sense of assurance, of confidence, of hope.

The group which works at a succession of jobs, on the contrary, continually hears the wolf's claws scratching on the door. They live in constant uncertainty, constant fear. They have no assurance of continuing income, no solid basis for hope, no opportunity to get a few dollars in the bank, no justification in starting to buy a home. They are living from hand to mouth, and never know at what moment the hand may be empty. Their self-respect and honesty are always under the strain of fear; their working efficiency is deteriorated by a continual change of jobs that makes it impossible for them ever to attain efficiency at any. They are, by force of necessity, jacks of all trades and masters of none, and after they pass thirty-five and their strength begins to wane, the effects of undernourishment and the declining courage that accompanies a life of fear all bring a steadily declining efficiency.

The "professional casual" is a third distinct type of resident laborer. He is a distinctly lower type than either of the others, but recruited from their ranks. Every employment office is familiar with this type. Any city with three hundred thousand people will have perhaps three or four hundred well-known individuals. Some of them are steady patrons of the state or municipal offices, some of the Salvation Army, some of the charities. Others hang around saloons, hotels, settlement houses. Individuals of the type can be found in almost every country town and rural community. They are a distinct social group.

At some times, especially in the winter, the employment office finds among them laborers and mechanics who ordinarily work steadily but who are temporarily unable to get work and are taking odd jobs to carry them along. For instance, our office carried a machine operator with a wife and family for about four months at odd jobs, until he was able to get a steady job. He has now been working steadily ever since last September in a machine shop. But these are not

casual workers. They do not belong to the type. They are doing casual work only temporarily, and they neither live the life, nor think the thoughts, nor have the point of view of the true casual.

The casual never seeks more than a day's work. He lives strictly to the rule, one day at a time. If you ask him why he does not take a steady job, he will tell you that he would like to, but that he hasn't money enough to enable him to live until pay day, and no one will give him credit. If you offer to advance his board until pay day, he will accept your offer and accept the job you offer him, but he will not show up on the job, or else will quit at the end of the first day. He has acquired a standard or scale of work and life that makes it almost impossible for him to restore himself to steady employment. He lacks the will power, self-control, ambition, and habits of industry which are essential to it.

The causes which produce the casual are many. A striking number of them are young. In general, these seem to be defective—defective in those mental traits which are the basis of industry and ambition, and in the sense of responsibility; defective in moral stamina or training and addicted to drugs, drink, and vice; or defective physically and unable to do steady, hard work. Absence of the moral ideas and motives which cause most of us to work is probably more important in explaining these younger casuals than any other one explanation. Some of them have families which they make little or no effort to support, never working if they can get someone else to feed them. Others do not know in the morning where they will lay their head at night. They live permanently in the city, but have no residence. Some of them are moral failures, some defectives.

When we turn to the group of casuals who are older, their explanation is even more complex. Many are moral failures, mental defectives, or physical unfits, as already described. Others are the residuum of our labor market. Starting out as common laborers twenty years before, they were for a time steady workmen; then they became subject to irregular employment, either because of industrial conditions or because of drink or a taste for traveling. Gradually they became more and more irregular in their working and life habits and crystallized into casuals living from day to day and hand to mouth, without self-respect or ambition. They are almost parasites in the body politic.

Not all common laborers are residents of a community, however. Intermingling with the resident laborers we find a multitude of men who are continually wandering from place to place—today working in a factory in Minneapolis; a month from now on a construction job in Des Moines; later, bobbing up on a dam job in Wisconsin; migrating to the harvest fields in the fall, and then to the woods, to construction work, or to some factory job for the winter. These men too reveal distinct subgroupings. We find among them temporary migrants, skilled migrants, common laborers, and tramps.

The temporary migrant is found particularly in agriculture and contracting. Many farmers, farm hands, and city men, who are permanent residents of some community for the bulk of the year, go to the harvest fields in the fall. Many carpenters, painters, and other classes of mechanics or steady laborers leave town during periods when local employment is slack and good opportunities are presented elsewhere. This is particularly noticeable now, when so many are leaving their permanent homes to work for the government in other localities. But most of these men will either return to the towns from which they start or else take up a permanent abode in some other locality. They do not spend their life in travel.

The true migrant—the Ishmaelite of modern times—has no abode. He lives where he happens to be. If he gives you a so-called permanent address, it is the place he left years ago, never to return, or else it is fictitious. This type of migrant reveals two distinct classes—the skilled migrant and the unskilled.

We find the skilled man in such types as tile ditchers, cant-hook men, farm hands, and steam-shovel engineers. Side by side with them are common laborers who work on construction of dams, railroads, bridges, in the lumber woods and harvest fields, or wherever large gangs of men are assembled from distant places.

These men have no homes. They have either no families or several families. They live in the camp or the lodging house. Their pleasure is found in the saloon and its accompaniments, in the pool room or the movie, or in the rough jokes of the camp. When in town they are the prey of the saloon, the "hook shop," the second-hand store, the employment agency, the municipal police court, the lodging-house thief, the pickpocket. On the job they are ordinarily parts of a gang, who are "hands" in the eyes of foremen and



employer. In camp their lot is often little better. I have known cases where men have worked a month and have been in debt to their employer at the end for employment fees, post-office fees, board, hospital fees, and transportation.

When I was a child I was much interested to learn that the Arabian Bedouins, wandering over the desert, travel certain routes year after year by which they pass through certain oases at certain times. Tens of thousands of these camp workers follow a similar trail—passing from industry to industry and locality to locality in a more or less regular path of migration. As the seasons pass they move from contracting to harvest to lumber woods to railroad work, and often insist on going to certain definite localities at each season.

I am trying to make clear that we have in America several hundred thousand, probably more than half a million men, who have no homes, who are residents of no community, who are parts of no particular industry, whose contact with the life of our nation consists in contact with cheap lodging houses, private employment agencies, second-hand stores, and pawnshops; vicious women, saloons, and municipal police courts; industrial camps, where the minimum of decency and cleanliness is maintained; the brake beams of the freight car; and a total absence of any home, church, or community life.

These Ishmaelites of the twentieth century are one of the by-products of our economic system. The exploitation of a continent's natural resources, the single-crop system of agriculture, the alternations of industry due to the seasons, the fact that in a new country labor has to be attracted to new points in the process of developing new enterprises, have been the economic bases of a labor-distribution system in which labor has been shifted here and there to meet the demands and needs of capital and land. We have forgotten that while labor may be a commodity, laborers are not. We have met the needs of industry without protecting the personalities of laborers. We have developed our resources while spoiling citizens. Hundreds of thousands of men for whom no individual industries, no community, no particular group of socially visioned people have felt themselves responsible have been steadily deteriorated and ruined by a life of migration and irresponsibility.

## III

We will now trace the relation of the employment system in America to the labor types. We are very charitable in speaking of it as a system, for it is precisely the absence of any *system* of distributing labor which is the outstanding characteristic of the situation. We have, in all centers where laborers congregate, commercial agencies which make a business of selling jobs to laborers for a fee. We have state and municipal offices in nearly half of the states, but in most cases each local office works individually and without any correlation with other public offices in the same state. The federal government has had an extremely crude employment system in the post offices, and has made a weak attempt at federal-state coöperative offices in the Immigration Bureau. Both of these experiments were failures, and the federal government is now attempting to develop a real organization of the labor market through the Department of Labor. Little practical progress has been made, and no genuine success will be achieved until the nation more fully recognizes some of the fundamental facts in the situation with which it is seeking to cope.

The essence of our industrial policy with respect to labor has been continuous turnover. In every industry, though not in every individual establishment, our employers have followed a policy of hiring and firing. If a man did not happen to make good at a particular task, he was discharged and someone else hired, instead of being transferred to some other task better adapted to his qualities. Foremen have considered the power of discharge as their one unfailing method of discipline. Discharge has been in industry what spanking *used to be* in the home and the schoolhouse. In each case it has been the means by which those too lazy to think of better ways of proceeding have dealt with the weak in their power. Excessive discharge in industry has been as disastrous in its effects on the industrial and social efficiency of labor as excessive whipping on the soul of a child. It has weakened the worker's self-respect, decreased his self-reliance, and encouraged subservience. The continual change of jobs has prevented the worker from ever learning any job well and has destroyed all interest in his work.

The losses are equally disastrous from the employer's point of view.

It takes the time of foremen and bookkeepers to hire and fire, and the time of foremen to instruct the new hand ; fellow employees and machinery are slowed down while he learns his job, and breakage and waste are increased. Millions of dollars are lost to employers every year by the slowing down of their plants and wastage of time and materials caused by excessive labor turnover.

There are certain principles which I believe must be recognized in order to reduce the social losses that I have been pointing out. We must have a system of employment offices, national in scope and monopolizing the whole employment business, which will be so carefully worked out that every worker can be placed in the nearest job that he is able to fill and will have access to every job open to a particular capacity. Our system must be able to keep every workman employed with the maximum steadiness ; must be able to sift and classify the laborers, so that individuals who have a tendency to degenerate into casuals may be spotted and if possible held to steady employment ; and must be able to sift out and furnish employers *with the kind of men they want*. It must dovetail the industries of each locality so as to use every man in the locality as steadily as possible in that locality.

To accomplish these manifold purposes we must have a national system of employment offices, with branches in every locality and a central clearing house. Within this national system must be zones, or districts, with clearing houses for each district ; and within the districts must be subdistricts with their own clearing houses. If a local office in a subdistrict could not fill an order, it would telephone the order to its clearing house, which would seek to obtain a man from some other local office in the subdistrict. If the demand could not be filled in the subdistrict, it would be transferred by the subdistrict clearing house to the district clearing house, which would seek a man in the district. Similarly, if the district could not fill the order, it would clear the demand through the national clearing house.

This clearing-house system, if it were combined with a monopoly of the labor market, would enable the public employment offices to check labor migration by always finding the nearest man who was competent to fill the position. We should not then have men leaving Chicago to fill jobs in St. Louis at the same time that men are leaving

St. Louis to fill the same kind of jobs in Chicago. The pressure would be put on men to make them remain where they are, instead of to cause them to move. Within a big labor market like New York or Chicago tens of thousands of jobs would be filled annually by local men which are now filled by outsiders; tens of thousands of men kept at home who are now emigrating to other localities.

The effect which such a system of offices might have upon labor turnover is even more important. That portion of the labor force which is most frequently changing jobs would soon be recorded in the files of the employment offices. A glance at a workman's card would show his history—whether he was a casual, an irregular laborer, or normally a steady man. It would show the kind of work he has followed. Any local office desiring further information concerning a certain man could quickly get it by telephoning or telegraphing other offices in which he was registered. The sifting of men and their individual treatment would become a practical possibility instead of a theoretical ideal. The offices could use pressure to hold a man steady.

The record of employers would be equally useful. Those plants which revealed excessive turnover could be easily sifted out, and the matter brought to the attention of their managers. By personal interview, bulletins, and correspondence the offices could call to the employers' attention the causes of excessive turnover, its cost, and its treatment. The criticism of workmen against individual firms could be brought to the employer and the faults corrected.

To illustrate: A certain firm in Minnesota has been employing 200 or 300 men in a construction camp for about two years. They have a good camp, with steam heat, iron beds, good wash rooms, and other conveniences. The firm provides good food. The foremen do not drive the men. The wages are high. Nevertheless an excessive turnover of labor continued. The public employment bureau determined to find the cause. Upon investigation, man after man reported that the company was providing good food, but poor cooks were spoiling it. The company, for their part, showed that they were paying high wages to their cooks. But they were not getting the service. Correction of the difficulty quickly cut the turnover. In two similar cases it was found that a brutal foreman was the cause of frequent quitting; in another, wages had fallen below the

market rate. An office in continuous touch with the employers and men of a given labor market develops a surprisingly intimate knowledge of the conditions in the several establishments.

But most important of all the advantages are two—that the market for labor would be centralized and that those in charge would be interested in serving the needs of the employer and the employee rather than in personal profit. Centralization in the labor market has the same advantage that centralization in any market has. The buyer and seller have the maximum opportunity of getting in contact with someone with whom they can do business. At present, with a large number of unrelated employment offices operating in the same town,—state, federal, commercial, philanthropic, trade-union, and the rest,—the employer who wants a certain kind of man frequently places his order in one office while the employee who seeks that kind of work files his application in another. The two fail to meet. With a single coördinated system of offices the two will come together in every instance.

An employment system run for profit will never give either our industries, our workers, or the nation sound service. The profits of the employment agent come at so much per head. The more heads, the more dollars. The greater the turnover, the larger the profits. The interests of the employer demand a small turnover. The interests of the laborer demand a steady job. The interests of the employment agent are exactly opposite; the more men he sends out, the greater the number of fees. Private agencies are daily shipping men by the thousands who they know will not stick. Frequently they know that the man's real intention is to jump the job he is sent to and go to some near-by work. But what's the difference? Large turnover means large fees, and large fees are the object.

The state and municipal offices as heretofore managed in this country have in most cases (not in all) developed a similar motive favoring turnover. In their case it is unconscious. They measure their efficiency by the cost per head to the state of the men sent out. They brag that it has cost the state but 30, or 25, or 19 cents per man sent out, as compared with the \$2 fee collected from workmen by the private agencies. Since most of the state and municipal agencies have a set budget, say \$5000 or \$10,000 per year, approximately, all of which they spend, their average cost is lowered in

proportion to the number of men sent out while spending the appropriation. The larger the business, the smaller the average cost per job filled, and the better the showing. The natural result is an emphasis on the number of men sent out rather than on the quality of service rendered. Instead of studying their local market, to develop policies that will give the local workers the maximum continuity of employment and local employers the steadiest possible labor force, their effort has been concentrated upon getting orders for jobs vacated and men to fill them. They have made no effective effort to decrease labor turnover, and if they do, they will impair their showing before their legislative bodies by running up a higher per-capita cost for placement. Cheapness rather than quality has been the criterion thus far applied to their service. And it is the criterion that will continue to be applied until we establish a comprehensive system of employment offices, in charge of men who understand the employment problem and are technical experts in dealing with it, and who are independent of the annual and biennial criticism of local legislative bodies not conversant with the problems being worked out. It is only under such conditions that the employment organization can attack and solve the vital problem of our labor market.

#### IV

I have emphasized two points as fundamental to a successful organization of the labor market: first, a consolidation of all public employment agencies into a single system under the auspices of the federal government, with subdistricts and clearing houses just as we have in the Federal Reserve banking system; and, second, a monopoly of the labor market, so far as employment-agency work is concerned, by this federal employment system. A further word on these two points is now necessary.

The country had no lack of employment agencies when the war broke out; it has none now. The only trouble is that they are not of much use. The postmasters were acting as employment agents. The Federal Immigration Bureau was also running a system of employment offices. This is now discontinued, and a new set of federal offices, under an employment chief of the Department of Labor, is in process of establishment. More than one half of the states

had state employment offices. Many municipalities had employment offices. The Y. M. C. A. and Y. W. C. A., charity societies, commercial associations, settlement houses, the Salvation Army, and other semipublic or charitable organizations were running a host of agencies, more or less defiled with the taint of charity. Thousands of private profit-getting agencies were in operation in all of the labor centers.

The number of employment agencies in the country ran into the thousands, probably the ten thousands. But each was a distinct unit. The postmasters had no effective system of coöperating with each other and made no attempt to coöperate with the immigration-bureau offices. The various immigration offices were distinctly local and had no system of coöperating with one another. They had no clearing houses. They were in no effective coöperation with state offices except in half a dozen cities. The state offices of each state were, as a rule, run as local offices and without any centralized management of the state labor market. The philanthropic agencies coöperated neither among themselves nor with the public offices. Decentralization, disorganization was—and is—the keynote of the situation.

The first essential step now is legislation that will weld all of the existing state and municipal offices into a federal system, centralized, coördinated, systematically managed, and controlled by big, far-seeing policies. The same legislation should eliminate forever the private commercial agency, which has cursed our economic system far too long. Monopoly is essential in order to insure that all orders for men and applications for work shall be brought to the same office, so that buyer and seller may have their needs met with maximum rapidity and efficiency. It is likewise essential to check turnover and migration. Philanthropic agencies, operated without profit to their owners, might be permitted to continue if operated in close coöperation with the public system. But practically all of them would go out of business as soon as a proper organization of the market was established.

The plans suggested are not theoretical. England has for years been operating a system of employment offices not materially different from the plan suggested. Ohio is today operating a system of twenty-two offices on similar principles. A clearing house for

public noncommercial employment agencies is now clearing for over seventy agencies in New York City. Many able men in this country are already sufficiently experienced in employment-office management and sufficiently conversant with the problems to be solved to undertake the installation of an American system that will be an ideal for the world.

The war has revealed how acute is the need. The time is ripe. An aroused public should demand a termination of the suicidal labor policies which have been ruining the efficiency of American labor.

DON D. LESCOHIER

UNIVERSITY OF WISCONSIN



## PART III. LABOR MANAGEMENT

### XI

#### SCIENTIFIC SHOP MANAGEMENT<sup>1</sup>

MR. TAYLOR . . . The development of a code of laws, of a science to replace the old rule-of-thumb knowledge,—recording it and reducing it to laws,—is the first principle of scientific management. Second, the scientific selection of the workman and his training. Third, the bringing of the science and the trained workman together. And fourth, some scheme, joint effort, to make it worth while for the workmen to work according to the new scheme. Pig-iron handling is the cheapest form of labor known. . . . Probably the most important element in the science of shoveling is this: There must be some shovel load at which a first-class shoveler will do his biggest day's work. What is that load? To illustrate: Right back of the office of the Bethlehem steel works, there was a train of rice coal being pushed in and the right kind of fellows at the shovels. No fellows could work better than they worked. But we saw first-class shovelers go from shoveling rice coal with a load of  $3\frac{1}{4}$  pounds to the shovel to handling ore from the Messaba Range with 38 pounds to the shovel— $3\frac{1}{4}$  to 38 pounds. Now it don't take much science to see that they can't both be right. Now, what is the proper load for a man to take on a shovel? It was up to us to make a scientific investigation of shoveling. This lasted more than a year of constant study and work. In making that investigation a number of men were busy at it all the time—high-class men, men who were very much in earnest. Here's a sample of the way to go at it. There is nothing too small for a careful, thorough study. What we did was to call in two big, powerful shovelers. Let me point out, gentlemen, some people would say, why

<sup>1</sup>From publication of the Milwaukee Federation of Labor, 1914. Discussion by Frederick W. Taylor and N. P. Alifas, representing Metal Trades Department of the American Federation of Labor.

didn't you pick out some weak ones? Because we have common sense; because we propose to get the right man doing the right work. Well, we called in two powerful shovelers. That's one of the characteristics of scientific management. First-class men for the job. These men were then talked to in about this way: "Now, Pat, you are going to be asked to do a whole lot of fool things. A young fellow is going to write down all of the things you are doing. What we are after is certain facts. What we want you to do is to work just the way you are told to work. If you do that,—and we know you think it will be a disagreeable thing,—we are going to pay you double wages while you are doing it. Whatever he says goes. He looks like a fool, but don't you get it through your head he is a damn fool. You try to soldier on him and you will never come back here again. I want each of you fellows to work so as to go home properly tired but not overstrained. There is going to be no more soldiering and you have got to be just as careful not to do too much as not to do too little. Why? Because we want our men to do something that they can do throughout their lives without hurting themselves." Why? Because this whole scheme depends on getting the maximum output. You have got to do a good, proper day's work, but there is no such thing as nigger driving under scientific management. . . .

You put a man to shovel a load and give him on his first trial a big shovel, shoveling all day long. The number of shovelfuls, 38 pounds on the shovel, were counted. We then cut the shovel off so that it held about 34 pounds. He shoveled more stuff with the 34-pound load. With a 30-pound load he shoveled still more tons per day. A 21-pound load was the maximum. With the 18-pound load he shoveled less. That is, the powerful workman, well suited to his job, did the biggest day's work with this 21-pound shovel. How far-reaching is that law? Under the old system every fellow owned his own shovel. Every man went at it each day as he saw fit, and the shovel was the same size, whatever the kind of work. Now, as a matter of common sense, we saw at once that it was necessary to furnish each workman each day with a shovel which would hold just 21 pounds of the particular material which he was called upon to shovel. That meant that where a man was handling great big gangs before, now we had to handle each man by himself. Each man had to be studied as a man and find out what he was fitted for. We had

to study each man's work every day. . . . We had to have men teachers appointed to show those men how to shovel and how to shovel right, to teach them how to shovel. We had to have men figure up each night just what every man of that gang did the day before. The first thing each workman did when he came into the yard in the morning—and I may say that a good many of them could not read or write—was to take two pieces of paper out of his pigeonhole. One of those slips of paper informed the man in charge of the tool room what implement the workman was to use on his first job and also in what part of the yard he was to work. The second one was a white or yellow slip of paper. It told what they earned yesterday—how they fell down. If it was a yellow slip of paper they knew they had fallen down. If that happened three or four days they would hear from it. The old way of treating a man would be to say to him, "Pat, you are no good, now get out of this." Now let me show you what happens. Generally the man was sent down to him that taught him how to shovel. "Here, Jim, you have got four or five of those yellow slips. Have you been drunk, or are you sick? Because if you are sick we will give you a show somewhere else for a while, while you are getting better. Have you forgotten how to shovel? Go ahead and shovel and I will see what's the matter with you."

Now that teacher knows all about the art of shoveling, and he not only knows how to shovel but he knows how to show another fellow how to shovel. Now he says to that workman: "Go ahead and shovel." He finds almost every time that the fellow forgot how to shovel. Now, gentlemen, I dare say some of you have done some shoveling, but whether you have or not, I am going to try to show you something about the science of shoveling. There is a good deal of refractory stuff to shovel around a steel works; take ore, or ordinary bituminous coal, for instance. It takes a good deal of effort to force the shovel down into either of these materials from the top of the pile, as you have to when you are unloading a car. There is one right way of forcing the shovel into materials of this sort and many wrong ways. Now the right way is to press the forearm hard against the upper part of the right leg just below the thigh, take the end of the shovel in your right hand and when you push the shovel into the pile, instead of using the muscular effort of your arms, which is tiresome, throw the weight of your body on the shovel. That

pushes your shovel in the pile with hardly any exertion and without tiring the arms in the least. Teaching a man how to shovel requires the same sort of coaching as there is in baseball. Then there are lots of other elements in shoveling, the shape of the shovel, etc. Now the new idea that comes under scientific management is that if that man isn't shoveling right it's our fault, because we haven't taught him right. It's not his fault. We don't go down there blaming him. It's up to us. We have failed somewhere. The probability is, it's the management's fault. All that costs a whole lot of money. The question is, Does it pay? No scheme which doesn't pay for itself as it goes along can be worth anything. It won't persist. A very proper question is, Does this thing pay? If it doesn't pay, it's no good. At the end of three years we had a good chance to find out. There were several million tons of material handled in the Bethlehem Steel Company in the course of a year. Under the old system it cost between 7 and 8 cents to shovel a ton. Now, after paying for all the clerical work which was necessary under the new system, for the teachers, for building and running the labor office, and then paying the men 60 per cent higher wages than they got before, the cost of shoveling a ton was reduced from between 7 and 8 cents under the old system to between 3 and 4 cents under the new system. In addition to that, the saving during the last six months of that three and one-half years was at the rate of \$78,000 a year. And the workmen there got justice, there was friendship in place of enmity. I had them look up those men, and they were all happier and better off. That is the justification of scientific management. You have got to have that every time, or else scientific management doesn't exist.

MR. ALIFAS . . . In regard to our objections to the system, I might start in by telling you what we consider its possibilities. These possibilities are the main objections we have to the system. . . .

If it is a fact that workmen are loafers as a general thing unless somebody gets behind them with a whip to spur them on, and the employer is to blame for that, why of course he will take that blame very kindly, due to the fact that he thinks he hasn't got behind them strong enough. There are a great many forms of stimuli added to the stimulus that is ordinarily used. As to the machinists, those that are organized, they don't favor any system that gives them any more

stimulus than the stimulus that is ordinarily in vogue under day-work. They find that the fear of discharge and the supervision of the foreman, and the desire of the men to retain the good will of their employers, are sufficient for all purposes to make them do a desirable day's work. . . .

One of the first stimuli that has been added is the premium system. And of course it is well recognized that if a man, in addition to the fear of discharge and the fact that he has to do a good day's work, is induced to speed up by means of being offered a reward, it will stimulate his movement just that much faster.

A great deal has been said here in regard to the very unsatisfactory method of getting prices finally set by means of piecework. It appears that the employer can't resist the temptation to cut prices if a man makes more than he thinks he ought to make. The inference seems to be that the employer loses that notion once he tries scientific management. As we look at it, it resolves itself down to this: Piecework is paid on a basis that is more like guesswork. If an employer has found out just what the least time is that a man can do a job under the premium system with a time-study method of ascertaining the time, he arrives at that time in the first place, so that he doesn't have to reduce the man in order to get him down to the very highest speed and lowest wages. An employee under piecework would at least be having the advantage of not having to work quite so hard and getting better wages while the cutting was going on. Of course, if they continued piecework long enough, they would eventually get down to the basis where an employee could just about make what the employer thinks he ought to make.

It is advocated that once the system gets started, they should add another stimulus to the premium. That is, they would start a system—the differential piecework system, that consists of ascertaining what the maximum amount of work a man can do in a day is, and when they find that, then offer him a piece price in addition to a bonus. An illustration has been given: Say a man could make ten pieces in a day. He would get 35 cents a piece for those. If he makes nine and three-fourths in a day, he would get only 25 cents a piece for them. That would furnish a man with a powerful incentive to speed up abnormally. That is an incentive that is much higher than even the premium system or the piecework system. It

would be clear to you just why the premium system is a system that contains more stimulus than the piecework system. Under the premium system, as it is in vogue at the Watertown arsenal, if it has been discovered, say, that the least possible time in which a job of one hundred pieces could be done is forty minutes, they add 40 per cent to that and say if a man can do that inside of an hour he shall get paid, say, one half a cent or half of his rate for every minute that he saves under that. He would be getting 40 cents for doing that hundred pieces instead of 30 cents. The faster he does the job, the more money he gets for the job.

Now another stimulus that they propose is that if a foreman is given a premium in proportion to the number of men under him that are making a premium, he will have a greater interest in getting them to do more work. Of course he will. If a foreman is going to lose money every time one of his men fails to make his premiums, he is going to get after that man. It isn't going to be a question of investigating to learn just why the man couldn't do a day's work and endeavor by coaxing and persuasion to get him to do it, but by something more forcible than that.

Now there is the question of the amount of premium that a man shall get. According to the way this question was explained by Mr. Taylor in his work, the amount of premium is regulated by what they can get the men to exert themselves for; that is, if by a series of experiments it was found that if they paid 15 per cent premium, the men would not do the work. If they paid 45 per cent premium, they would do the work, but it might not be necessary to pay that much. They finally get to 30 per cent we will say. So that the premium is not an amount that is given gratuitously in any sense of the word. If the labor market should become glutted, it would become quite possible that the premium would be lowered either by reducing the day rate or by lowering the premium, so that that is a matter that is decided according to experiment and law—this kind of laws.

It has also been ascertained just how much a man can do in a day, by experimenting with his strength; that is, by a load of, say, fifty pounds. If a man would rest a certain portion of time in a day, he would carry so much. By the system of experimenting with a good strong man they could find out just what the maximum amount

of the load was he could carry in a day. The idea would be to set that as a day's work. In regard to wages, the amount of wages would be set by what they could get the man to work for, by the law of supply and demand.

We have figured out that if we are going to be reduced to a scientific formula, so to speak, we are going to object that it is not to our benefit to be thus experimented with. . . . We also protest against it because apparently there is no place in scientific management for collective bargaining, at least according to the statement of these gentlemen some years ago. In this work written by Mr. Taylor, in paragraphs Nos. 425 and 426 of his "Shop Management,"

The writer believes one way of regulating the wages and condition of employment of whole classes of men by conference and agreement between the leaders of unions and manufacturers to be vastly inferior, both in its moral effect on the men and on the material interests of both parties, to the plan of stimulating each workman's ambition by paying him according to his individual worth, and without limiting him to the rate of work or pay of the average of his class.

The amount of work which a man should do in a day, what constitutes proper pay for his work, and the maximum number of hours per day which a man should work together form the most important elements which are discussed between workmen and their employers. The writer has attempted to show that these matters can be much better determined by the expert time student than by either the union or a board of directors, and he firmly believes that in the future scientific time-study will establish standards which will be accepted as fair by both sides.

That is an indication to our minds that there is really no place in scientific management for two people's opinions.

It has been stated that there is no opposition. As far as we can ascertain from the workingman's point of view, there is nothing but opposition to this system. We have been opposing it for a long time. . . . It has been stated that these systems provide for higher rates of pay for workmen. That is not literally true, according to the testimony of these gentlemen. In paragraph No. 37 of this book on "Shop Management"

By high wages he means wages which are high only with relation to the average of the class to which the man belongs and which are paid only to those who do much more or better work than the average.

of their class. He would not for an instant advocate the use of a high-priced tradesman to do the work which could be done by a trained laborer or a lower-priced man.

The idea seems to be that the systematizing which is part of the Taylor system will so simplify the work that where they had to have a high-priced man before the system was introduced, afterwards they could get along with a cheaper man. While the cheap man would get a premium or a bonus for speeding up, he doesn't receive as much as the man whom he displaces would be getting. That's the ideal condition, according to what they advocate. That condition may not have been achieved anywhere, but that is possibly due to the inability of the managements to get the most out of the system that it is possible to get out of it. That hasn't much to do with their intentions, as we look at it. Their intentions are to get the most out of the men for the least money. It's the same as employers have ever done. . . . This system may look to some people as a great boon. It looks to the working people as the beginning of a new slavery, if it is possible to enforce it, where we will have no opportunity to get any satisfaction from our complaints. What satisfaction would a workman get who went to the office and complained against the injustice of a stack of books like that? He would not get any consideration at all.

We can't see that this system has the ingenuity to change employers' sentiments.

Some people may wonder why we should object to a time study. In the first place it is humiliating for a man to be suspected of soldiering and loafing. One way is to hold a stop watch on him, so that he doesn't cheat. That's not the principal objection. The objection is that in the past one of the means by which an employee has been able to keep his head above water and prevent being oppressed by the employer has been that the employer didn't know just exactly what the employee could do. The only way that the workman has been able to retain time enough in which to do the work with the speed with which he thinks he ought to do it, has been to keep the employer somewhat in ignorance of exactly the time needed. The people of the United States have a right to say we want to work only so fast. We don't want to work as fast as we are able to. We want to work as fast as we think it's comfortable for us to work. We



haven't come into existence for the purpose of seeing how great a task we can perform through a lifetime. We are trying to regulate our work so as to make it an auxiliary to our lives and be benefited thereby.

Most people walk to work in the morning, if it isn't too far. If somebody should discover that they could run to work in one third the time, they might have no objection to have that fact ascertained, but if the man who ascertained it had the power to make them run, they might object to having him find it out.

## XII

### THE PROBLEM OF LABOR TURNOVER<sup>1</sup>

THE typical handicraftsman of the Middle Ages pursued the same trade all his life, with the exception of the *Wanderjahr*, in the same town. The Industrial Revolution has increased the mobility of labor in at least four different ways: (1) In the movement between countries. Individual migration as opposed to group migration has been the characteristic since the Industrial Revolution. The growth of America, Canada, and Australia during the nineteenth century was made possible largely by the development of steam power. (2) In the movement between different sections of the same country. The American of today does not stay predominantly in the place of his birth. He moves about from place to place. The Russell Sage Foundation found that of 22,000 men investigated in seventy-eight cities, only 16 per cent had been born in the city in which they were then living.<sup>2</sup> Of native-born Americans only one quarter were living in the city of their birth. (3) In the rapid change of residence in any given locality. The modern worker, while in a town, rarely lives long in any one apartment or house. He moves almost unceasingly. (4) In the frequent changing of positions. The workman may leave one plant to enter either another plant in the same industry or one in a totally different industry.<sup>3</sup> Recent studies have shown how transitory the modern wage relation is and how temporary is the occupancy of any particular position.

It is the purpose of this article to consider solely this rapid flux from position to position, and to examine its nature, its extent, its cost, and its causes and remedies.

<sup>1</sup>From *American Economic Review*, Vol. VIII (1918), pp. 306-316; Vol. IX (1919), pp. 402-405.

<sup>2</sup>L. P. Ayres, *Some Conditions Affecting Problems of Industrial Education in Seventy-Eight American School Systems*, p. 7.

<sup>3</sup>See Paul de Rousier's "The Labor Question in Britain," pp. 288 ff.

## I. WHAT IS "LABOR TURNOVER"?

The term "labor turnover" has been given to this rapid change from position to position. The size of the labor turnover depends upon the proportion that the total number of employees hired during a year bears to the size of the labor force that must be maintained. To illustrate: a plant which employs 1000 men at the beginning and end of a given year hires during that year another thousand. That means that as many men have been newly hired as were employed at the beginning of the year and that 2000 men have been employed during the year to fill 1000 jobs. This is an excess of 1000 men over what would have been needed had the original force stayed through the year, and is reckoned as a 100 per cent labor turnover. Had only 500 new men been hired during the year, the turnover would have been 50 per cent; had 2000 men been hired it would have been 200 per cent.

## II. METHODS OF COMPUTING LABOR TURNOVER

The recent discovery of the extent and costs of labor turnover has brought with it varying methods of computation. In order that a standard practice might be adopted, the National Association of Employment Managers at their annual meeting in May, 1918, adopted the following method,<sup>1</sup> which has since been approved by the United States Bureau of Labor Statistics as the basis for its investigations:<sup>2</sup> "To compute the percentage of labor turnover for any period, find the total separations for the period considered and divide by the average of the number actually working each day through the period."

<sup>1</sup>For a full statement of this report see U.S. Bureau of Labor Statistics, *Monthly Review*, Vol. VI, No. 6 (1918), pp. 172-173. That this method did not introduce uniformity may be seen from the symposium on labor turnover in *Industrial Management*, September, 1918, pp. 239-246, and November, pp. 425-426, in which from five to six different methods were advanced, practically all of which, in the opinion of the author, are wrong.

<sup>2</sup>See Boris Emmet, "Labor Turnover in Cleveland and Detroit," U.S. Bureau of Labor Statistics, *Monthly Labor Review*, Vol. VIII, No. 1 (1919), pp. 11-30; Paul F. Brissenden, "Labor Turnover in the San Francisco Bay Region," U.S. Bureau of Labor Statistics, *Monthly Labor Review*, Vol. VIII, No. 2 (1919), pp. 45-62.

Before criticizing this method it is necessary to determine just what is meant by "turnover." Labor turnover is simply the number of men hired by a given business unit to take the places of men who have left. Turnover in this sense is exactly similar to the use of the term by any retail merchant to indicate the disposal of certain units and their replacement by other units.<sup>1</sup> Turnover as such does not begin until replacement occurs.

The percentage of labor turnover is the proportion which these newly hired men who actually replace others form of the average force employed in a given period of time. It indicates the percentage of men which it has been necessary to hire in order to maintain a constant labor force. In itself it indicates nothing as to whether the force itself is being increased or decreased.

In the light of this definition (which I believe would be approved by every student of the problem), the method of computation adopted by the Bureau of Labor Statistics is defective in the following ways:

1. It uses separations rather than replacements as the basis of turnover. The definition of turnover adopted by the Employment Managers Association is indeed as follows: "Labor turnover for any period consists of the number of separations from service during that period. Separations include all quits, discharges, and lay-offs for any reason whatsoever."

It is true that in a period in which the working force of the given plant is being increased, separations do roughly constitute the amount of turnover which takes place. Men are being hired not only to increase the net working force but to take the place of those who have left. It is only in the latter sense that they constitute replacements and enter into turnover. Separations in this case, therefore, do approximately measure replacements. To be absolutely accurate, however, one should subtract the vacated positions which have not been filled from the total separations to secure the number of actual replacements. Such a deduction, however, although ideally necessary, may not be practically possible in many instances, due to insufficient pay-roll data.

<sup>1</sup>With the exception, of course, that a high labor turnover means an economic loss to the employer, while a high turnover of goods means an economic gain to the merchant.

But the case is different if the labor force is decreasing. Suppose that a given plant decreases its force in a given period of time from 1000 to 900 and hires no new men. There are 100 separations, but no new men have entered the plant. Turnover as such has not occurred. Yet the method adopted by the Bureau of Labor Statistics would show a labor turnover of 100 men. Plainly, therefore, in this case separations do not measure replacements. The number of men newly hired do constitute replacements. It is not correct, moreover, in the case of a declining labor force to deduct the positions vacated but not replaced from the number newly hired, since those newly hired have replaced some workers even if they have not replaced the particular ones whose positions are vacated.

The proper method, therefore, of determining replacements should take

a. The number of separations actually replaced as the base in the case of an increasing force.

b. The number newly hired as the base in the case of a decreasing force.

2. It uses the average attendance as the denominator instead of the number actually employed by the company. The best index of the average number actually employed is not the average attendance but the average number on the pay roll.<sup>1</sup> The use of the average attendance as the denominator confuses absenteeism with turnover. Recent investigations show that from 6 to 15 per cent of the working force are absent daily. Yet these men fill positions which are part of the working force, and consequently should not be disregarded in computing the average working force. Absenteeism should be treated as a separate item in labor loss and not included in the computation of turnover.<sup>2</sup>

<sup>1</sup> Care should be taken that the pay roll does not contain "dead wood," or men who have really left the employ of the company.

<sup>2</sup> Mr. Boris Emmet, an investigator for the U. S. Bureau of Labor Statistics, in his article on the "Nature and Computation of Labor Turnover," *Journal of Political Economy* (February, 1919), pp. 105-117, has come to believe in the use of hirings rather than separations in a decreasing work force, but he still clings to the use of the average attendance as the denominator. One of his objections to the use of the pay roll is that it contains absentees. Of course it does, but these can be computed separately and should not be confused with turnover.

The preceding paragraphs indicate the methods which I believe should be followed: To compute the percentage of labor turnover for any period, find the total replacements for the period considered and divide by the average number on the pay roll.

The difference between the method proposed by the author and that adopted by the Bureau of Labor Statistics may be seen from the following two nonalgebraic examples:

#### EXAMPLE A. COMPUTATION OF LABOR TURNOVER WITH AN INCREASING LABOR FORCE

1. Given statistics:

Number employed at beginning of month, 1000.

Number employed at end of month, 1100.

Number newly hired, 300.

Number positions vacated not filled, 10.

Average daily attendance, 900.

2. Method of Bureau of Labor Statistics:

Number of separations =  $300 - (1100 - 1000) = 200$ .

Labor turnover =  $\frac{200}{900} = 22.2$  per cent.

3. Method proposed:

Average force on pay roll =  $\frac{1000 + 1100}{2} = 1050.^1$

Number of replacements =  $300 - (1100 - 1000) - 10 = 190$ .

Labor turnover =  $\frac{190}{1050}$ , or 18.1 per cent.

Percentage of absenteeism =  $\frac{150}{1050} = 14.3$  per cent.

#### EXAMPLE B. COMPUTATION OF LABOR TURNOVER WITH A DECREASING LABOR FORCE

1. Given statistics:

Number on pay roll at beginning of month, 1000.

Number on pay roll at end of month, 900.

Number newly hired, 25.

Average daily attendance, 800.

2. Method of Bureau of Labor Statistics:

Number of separations =  $25 + (1000 - 900) = 125$ .

Labor turnover =  $\frac{125}{800}$ , or 15.6 per cent.

<sup>1</sup>That is, the arithmetic average of the number employed at the beginning and end of the month. The number each week can be averaged if more accurate methods are desired.

## 3. Method proposed :

$$\text{Average number on pay roll} = \frac{1000 + 900}{2} = 950.$$

$$\text{Number of replacements} = 25.$$

$$\text{Labor turnover} = \frac{25}{950}, \text{ or } 2.6 \text{ per cent.}$$

$$\text{Percentage of absenteeism} = \frac{950 - 800}{950}, \text{ or } 15.8 \text{ per cent.}$$

It will be noticed that the use of this method results in a much lower turnover rate, which is especially true in the case of a decreasing labor force.

The labor turnover for a given period should be reduced to a yearly basis in the same fashion that the Public Health Service reduces mortality and morbidity statistics to a yearly rate. If the given period is a month, the percentage should be multiplied by 12 ; if a week, by 52. Care should be taken (1) that the replacements listed should not include former employees newly hired for their old positions; (2) that the statistics be compiled for departments and trades as well as for the plant as a whole.

It is quite clear that some labor turnover is inevitable. Men who die or fall sick or are injured must be replaced. Since the men and women in industry are predominantly in those age groups where mortality is lowest, it is extremely probable that the death rate does not greatly exceed 10 per 1000, or 1 per cent. Sydenstricker and Warren estimate that the American wage-earner loses on an average about nine days a year because of sickness alone.<sup>1</sup> On a basis of 300 working days during the year, this would be an average loss of 3 per cent of the working time. But a corresponding 3 per cent labor turnover does not necessarily follow, because illness that is only of short duration does not occasion replacement. Industrial accidents furnish another small source of the labor turnover. Non-fatal accidents may necessitate a replacement of from 1 per cent to 2 per cent. However, taken all together, these causes would not be responsible for a turnover of more than 5 or 6 per cent.

<sup>1</sup>B. S. Warren and Edgar Sydenstricker, "Health Insurance, its Relation to the Public Health," Public Health Bulletin No. 76, p. 6. See also *American Labor Legislation Review*, Vol. VI, p. 156, which gives studies of Rochester, N. Y., and Trenton, N. J., that bear out Warren and Sydenstricker's estimate.

## III. THE AMOUNT OF THE LABOR TURNOVER

No complete survey of the amount of labor turnover in plants throughout the country is as yet forthcoming. The Bureau of Labor Statistics has been investigating this problem for over two years, but the results of their research have not yet been made public. Several studies of typical plants in different sections of the country, however, afford a bird's-eye view of the actual situation.

Mr. W. A. Gries, of the Jeffrey Manufacturing Company, in December, 1914, made the first detailed analysis of the extent of the labor turnover. Mr. Gries obtained the employment figures of twenty metal plants in the Middle West and found that to maintain an average of 44,000 hands during the year they were compelled to hire a total of 69,000. The labor turnover for these plants was consequently 157 per cent for the year.<sup>1</sup>

Mr. Magnus Alexander, of the General Electric Company, published a study on this subject in 1915. After an investigation of the employment records for 1912 of twelve metal-manufacturing plants in six states, he found that this group, which employed 37,274 workmen at the beginning and 43,971 at the end of the year, had hired during that year 42,571 new employees.<sup>2</sup> Deducting the net increase of 6697 in the working force, there were 35,874 replacements during that year. Using the number employed at the end of the year as a base, this would be a labor turnover of 82 per cent. Supposing that the increase had been evenly distributed throughout the year, and using 40,623 as a base, the turnover for these plants would be 88 per cent.

Mr. Boyd Fisher, after analyzing the employment figures for the last year in fifty-seven Detroit plants, found that the average turnover for the group was 252 per cent.<sup>3</sup> The Ford Motor Company from October, 1912, to October, 1913, hired 54,000 men to maintain an average working force of 13,000. This was a labor turnover of

<sup>1</sup> W. A. Gries, *The Handling of Men* (published by the Executives' Club, Detroit Chamber of Commerce), p. 3.

<sup>2</sup> Magnus W. Alexander, "Hiring and Firing, the Economic Waste and How to Avoid it," *American Industries*, August, 1915, p. 18.

<sup>3</sup> Boyd Fisher, "How to Reduce the Labor Turnover," *Annals of the American Academy*, Vol. LXXI, p. 14.



416 per cent for the year.<sup>1</sup> The figures from other plants are almost equally striking. A large Philadelphia concern had a labor turnover of 100 per cent in 1911.<sup>2</sup> The turnover of the Plimpton Press was 186 per cent in 1912.<sup>3</sup> The Pacific Telephone and Telegraph Company, of Portland, Oregon, hired 202 new girls in three months to maintain an average force of 700. If this is typical of the year, the turnover was 115 per cent. Mr. Gregg has stated that the turnover of the carding department of a certain cotton mill was over 500 per cent for one year.<sup>4</sup> Representatives of the Goodrich Tire and Rubber Company have declared that their turnover in former years was nearly 200 per cent and that for the last year it has been even higher!<sup>5</sup>

The turnover for juvenile labor is especially high. The Board of Education of Rochester, New York, found that boys between the ages of fourteen and sixteen changed their jobs, on the average, every seventeen weeks.<sup>6</sup> This is a turnover for juvenile labor of over 300 per cent. The employment records of Swift and Company of Chicago show that the average term of employment for a boy in their service was only three and a half months.<sup>7</sup> This means that nearly three boys and a half are employed every year for each position or, to be accurate, that there is a labor turnover of 342 per cent. Figures from Indianapolis, Indiana, show that of 6710 jobs held by children leaving school 7 per cent were for less than two weeks; 15 per cent for less than a month; 30 per cent for less than two months; and 48 per cent, or practically one half, for less than three months.<sup>8</sup>

<sup>1</sup> Boyd Fisher, "Methods of Reducing the Labor Turnover," U. S. Bureau of Labor Statistics, Bulletin No. 227 (1917).

<sup>2</sup> J. H. Willetts, "Steady Employment," supplement to the *Annals*, Vol. LXV, p. 70.

<sup>3</sup> Jane C. Williams, "The Reduction of the Turnover of the Plimpton Press," *Annals*, Vol. LXXI, p. 80.

<sup>4</sup> R. C. Gregg, "A Method of Handling the Problem of Labor Turnover," *Textile World Journal*, April 28, 1917.

<sup>5</sup> John A. Fitch, "Making the Boss Efficient," *The Survey*, Vol. XXXVIII, p. 211.

<sup>6</sup> Fifty-sixth Annual Report of the Board of Education, Rochester, N. Y., p. 142.

<sup>7</sup> National Association of Corporation Schools, April, 1916, p. 13.

<sup>8</sup> Adapted from figures given in *Indianapolis Vocational Survey*, Bulletin No. 21, Vol. I, p. 119.

The figures for manufacturing indicate, therefore, that the turnover for this branch of industry is extremely high. Mr. Ernest M. Hopkins, who has had a great deal of experience as an employment manager for several large industrial concerns, has said that a conservative estimate for many industries would be 100 per cent.<sup>1</sup> Mr. Ethelbert Stewart, who was in charge of the field work for the Bureau of Labor Statistics, has stated that some firms have as high a turnover as 400 per cent.<sup>2</sup>

The turnover in many branches of agricultural and construction work is even greater. Professor Carleton Parker, in a most interesting study of casual labor on the Pacific coast, cites a dried-fruit farm in California that had a monthly turnover of 176 per cent; a construction job in the Sierras, with a normal force of 950 men, which had a monthly turnover of 158 per cent; and a ranch with a nine weeks' fruit season which had a monthly turnover of 245 per cent.<sup>3</sup> After a careful investigation he concluded that the average duration of a job in certain kinds of work was as follows:<sup>4</sup>

	DAYS
Lumber camps . . . . .	15-30
Construction work . . . . .	10
Harvesting . . . . .	7
Mining . . . . .	60
Canning . . . . .	30
Orchard work . . . . .	7-10

#### IV. THE COST OF THE LABOR TURNOVER

A high labor turnover is not always an economic waste to the employer. A plant with many rush orders paying high wages may find it to its economic interest to drive its workmen at such a pace that they will be exhausted at the end of a few months. The old group of workmen can then be discharged and a new group employed. Many munition factories in the United States followed such a policy during the years 1915 and 1916. Though this is of course poor economy from the standpoint of social efficiency, and has been so

<sup>1</sup> Proceedings, Third Annual Convention, National Association of Corporation Schools, p. 758.

<sup>2</sup> Bureau of Labor Statistics, Bulletin No. 202, p. 8.

<sup>3</sup> Carleton H. Parker, "The California Casual and his Revolt," *Quarterly Journal of Economics*, Vol. XXX (1915), p. 121.

<sup>4</sup> *Ibid.* p. 122.

recognized in both England and America under the stress of war, yet it may well have been a paying policy for many firms.

As a rule, however, the employer suffers a very real economic loss from a high turnover. Although it is impossible to obtain exact figures on the cost of the excessive hiring and firing, careful estimates are fortunately available. The principal items that enter into the cost of employing new men are

1. The clerical cost of hiring and firing. This includes the time of the official (generally the overseer) who discharges the old worker and employs the new, plus the time spent on the additional pay roll and other records.

2. The cost of the instruction given the new employees by the foremen and the assistants. Even if the workman is experienced, considerable time must be spent in explaining the details peculiar to that particular plant. The cost of training a worker for a skilled or semiskilled position is much larger still.

3. Decreased production by the new worker before coming up to full working capacity. It takes time to "warm up" to one's work and reach the maximum of efficiency. Rapid shifting of men perpetuates this period of novitiation with its greatly diminished productivity.

4. Breakage and damage caused by the new man. This includes (a) the actual breakage of a machine or tool; (b) the stoppage of a machine, or the delay of work; (c) accidents to the workers, for which the employer is liable under workmen's compensation laws; (d) the wasting or destruction of material upon which the new worker is employed.

5. The cost of idle machinery and equipment where the old position is not immediately filled.

The cost per man naturally varies with the type of worker. Alexander classifies the employees under five heads:

- A. Highly skilled mechanics who have spent years in attaining their present proficiency.

- B. Mechanics of lesser skill who secured their training in a year or two.

- C. Operatives who, without previous experience, can acquire a fair degree of efficiency within a few months.

- D. Unskilled laborers needing practically no training.

## E. The clerical force.

His careful estimate of the expense per man for the various groups is as follows:<sup>1</sup>

A . . . . .	\$48.00
B . . . . .	58.50
C . . . . .	73.50
D . . . . .	8.50
E . . . . .	29.00

This is of course only an estimate, although a very careful one. Mr. Grieves estimated that the per capita cost averaged at least \$40.<sup>2</sup> Mr. John M. Williams, of the Fayette R. Plumb Company of Philadelphia, a tool-making concern, states that "the final cost per experienced man is over \$100."<sup>3</sup>

Mr. Alexander estimated that the annual unnecessary expense for the twelve factories that he covered was between \$830,000 and \$1,000,000. If Mr. Grieves's estimate of an average cost of \$40 is used, the total yearly loss for the twenty firms which he investigated was \$1,760,000, or an average of \$88,000 per firm. The yearly cost to the Ford Motor Company for its 416 per cent turnover was over \$2,000,000. Since these are figures for only a few plants, the annual cost for the country as a whole must be tremendous. A most conservative estimate would be between one and two hundred millions.

## V. CAUSES AND REMEDIES OF THE LABOR TURNOVER

This excessive shifting from position to position clearly demonstrates that something is wrong with industry. In diagnosing its causes we are at the same time enabled to suggest certain remedies that may lessen it.

Some of the more prominent causes are

1. Poor methods of employment and discharge. Men are generally hired en masse, with little regard to their qualifications, and fired summarily if they do not make good on the jobs upon which they are tried out. The power of employment and discharge is

<sup>1</sup>Alexander, *op. cit.*, pp. 20-21.

<sup>2</sup>W. A. Grieves, *op. cit.*, p. 5.

<sup>3</sup>John M. Williams, "An Actual Account of what we have done to Reduce our Labor Turnover," *Annals*, Vol. LXXI, p. 54.

generally vested in the foreman of each department. These men are rarely skilled in the tactful handling and judging of men.

2. Poor methods of promotion within the factory. Work in one position rarely leads to a higher position. The workman in any particular plant relies therefore upon a change to some other plant to better his status.

3. The seasonal nature of many industries. The turnover is necessarily large where the volume of output is not evenly distributed over the year. After the "peak" has been passed, many workmen must be laid off. If the peak reoccurs within a few months, a new force must be employed. Positions of short duration, spelling a high turnover, are the inevitable concomitants of seasonal industry.

4. Juvenile labor. Children rarely stay long in one position. The fourteen- to sixteen-year-old child is restless and wants to move about. A regular, settled employment rarely satisfies him.

5. The monotony of modern factory labor. This is rarely mentioned as a cause of labor turnover, but on a priori grounds we must infer that it exercises tremendous influence. Specialization and routine labor have rendered industry so dull that it is no wonder the modern artisan frequently throws up his job and seeks another plant from sheer weariness.

6. Low wages. A plant that pays low wages cannot hold men long. They regard the job as a makeshift and will leave it as soon as they can find another.

Thus some of the causes of this newly discovered phenomenon are long-recognized evils, while some have been but newly brought to light. The remedy most frequently proposed by students of the situation is the installation of a specialized employment department to have complete charge of the hiring, handling, and firing of men. In most factories the task of employment and the discharge of men is confided to the foremen of the various departments. Hands are both hired and fired in a hit-or-miss fashion. Many firms keep no employment records at all, and most of those that do keep such records have only scanty material. They seldom ask the reasons for the workman's leaving, nor do they measure the turnover department by department. The centralization of employment and discharge and the concentration of responsibility would permit the use of scientific methods.

Such a department could lessen the turnover in the following ways :

1. By the use of a better method of selecting employees. Physical tests would eliminate a considerable number that are now employed only to be shortly discharged. Though mental tests have not developed as yet so far as to make it possible to assign men to the particular jobs for which they are best adapted, at least those mentally incompetent for industry could be eliminated. The various jobs in the plant could, moreover, be analyzed in respect to the amount of skill and intelligence required of the operative. The workers could then be divided into rough groups according to their previous training and innate mental ability and assigned to the corresponding grade of work. A centralized personnel department could follow up and verify work references and thereby classify workers on the basis of past experience. And it could maintain a waiting list, so that when new men were needed they could be chosen largely from men about whom something was known instead of, as now, being picked up off the streets.

2. By a system of follow-up work for the new employees. This would include taking them to their place of work and indicating a friendly interest towards them. The training should be given preferably by special instructors and not confided to the foremen. In many cases it is best to give the new men preliminary training before they are actually placed in any department. Moreover, the working conditions should be closely watched by the personnel department in order to insure proper ventilation, lighting, the prevention of dust, and the lessening of fire and accident risks. To keep a record of absences, classified by individuals and by causes, would also be a legitimate task for such a department.

3. By an investigation of the reasons for the successes and failures of individual workmen. The method commonly employed is to discharge a workman if he fails to make good on a particular job. This involves a great waste. A workman may fail on a specific job and yet be a valuable man for the concern. It may be that the antagonistic attitude of the foreman or the men is such that he cannot do himself justice. It may be that he is ill-adapted to that particular position but would be perfectly competent in a position in some other department. The worker embodies a considerable investment of capital by the employer and is worthy of at least another trial

before he is discharged. The personnel department can find out the reasons for his lack of success and act accordingly.

Should the worker succeed in a given position he should be commended and assured promotion. A well-defined promotion policy would indeed save many a plant a great deal of dissatisfaction and lessened efficiency. The efficiency of the plant and the loyalty of the workers may be further heightened by the institution of discussion groups at which plant problems can be explained and workmen's ideas solicited. This will also serve to bring to light hidden talent which could be utilized in executive work.

The creation of such a personnel department, charged with these functions, is but the logical extension to the human side of industry of the scientific principles that have hitherto been employed on the mechanical side. It merely strips the department foreman of his employment functions and enables him to concentrate his attention upon the actual production of goods. With this splitting of the task greater specialization and efficiency can result. The centralized employment department has been tried in many plants and, on the whole, has been very successful.<sup>1</sup> Some illustrations of its success are (1) the reduction by the Dennison Manufacturing Company of its turnover from 68 per cent to 37 per cent a year; (2) the reduction of the turnover by the Joseph and Feiss Company of Cleveland, Ohio, to one third its former amount; (3) the lowering of the Plimpton Press turnover till it is now only 10 per cent a year; (4) the decrease in the Ford turnover from 416 per cent to less than 80 per cent. Other factors besides that of the creation of such a department contribute to the marked decrease in three of these plants. Forms of profit-sharing were introduced into the Dennison and Ford companies, while the Dennison and Feiss plants also succeeded in regularizing their output.<sup>2</sup>

<sup>1</sup>There are probably over 500 employment managers in the United States as a whole. The following cities have local associations of employment managers: Boston, Chicago, Cleveland, Detroit, Newark, New York, Philadelphia, Pittsburgh, Rochester, and San Francisco. The following are among the large concerns to have special employment departments: Sears, Roebuck & Co.; Marshall Field & Co.; Armour & Co.; Packard Motor Car Co.; Ford Motor Co.; Equitable Life Insurance Co.; R. H. Macy & Co.; American Tel. & Tel.; Curtis Pub. Co.; John B. Stetson Co.; Westinghouse Electric Co.; Eastman Kodak Co.; Dennison Mfg. Co.; Cheney Bros. See J. H. Willetts, "Development of Employment Managers' Associations," U. S. Bureau of Labor Statistics, *Monthly Review*, Vol. V, No. 3 (1917), pp. 85-87.

<sup>2</sup>Gregg, *op. cit.*

Small concerns would probably not find it profitable to create a special personnel department. Consequently this is one of the advantages of large-scale production. Whether there is a greater turnover in the larger plants which will offset this advantage is a question that cannot be answered at present.

Profit-sharing is another method of insuring greater permanence of labor. Mr. Boris Emmet, who investigated profit-sharing schemes for the Bureau of Labor Statistics, says, "All the informants, without exception, were also of the opinion that the establishment of the plans has a tendency to reduce the percentage turnover of their working organization."<sup>1</sup>

In so far as the labor turnover is caused by the seasonal nature of industry the creation of a specialized employment department would offer no remedy. Once the cost of labor turnover is recognized, the employers will see that the regularization of industry and the smoothing of the peaks of production will be economically beneficial to them. The efforts of the Clothcraft Shops of Cleveland and the Dennison Manufacturing Company have been turned especially in this direction.

The large turnover of children between fourteen and sixteen is merely another proof of the economic and social wastefulness of this class of labor. Industry and society would be much better off were the age of entrance into industry raised generally from fourteen to sixteen years. In so far as the labor turnover is due to the monotony of machine labor, few remedies within the plant can be devised. The men, to be sure, can be transferred from one machine to another.<sup>2</sup> But this is about all. The balking of man's innate tendency towards contrivance seems to be an inevitable consequence of the machine era. New avenues must be opened, outside of industry, for its legitimate expression.

Whatever may be the final steps taken to solve this problem, its recognition signalizes a marked advance in the development of human engineering.

PAUL H. DOUGLAS

U. S. EMERGENCY FLEET CORPORATION

<sup>1</sup>"Profit-sharing in the United States," U.S. Bureau of Labor Statistics, Bulletin No. 208 (1917).

<sup>2</sup>Mr. Dennison does this in his factory.



### XIII

#### PERSONAL RELATIONSHIP AS A BASIS OF SCIENTIFIC MANAGEMENT<sup>1</sup>

GIVEN two establishments in the same industry, in the same locality, build for them the same buildings, equip them with the same machinery, and establish for them similar methods of handling equipment and materials—yet, in the course of a short time, there will be a difference in both the quantity and the quality of their output. This difference in result will be caused by the difference between the two in the quality of their personnel. For this reason alone the question of personnel must ultimately be considered the real problem of management.

If one of the above plants were headed by a management of the ordinary or traditional type and the other by a management which fully realized the importance of personnel and had developed an active philosophy tending toward the solution of the personal problem, the difference in practical results would be so great as to be unbelievable by the uninitiated. In fact, this difference alone would often spell failure in the one case and success in the other.

The managers of both plants would see the shortsightedness of letting buildings and other equipment run down for lack of upkeep and repair. Both would see the value of and put into practice means for running the machinery at the most efficient speeds and bringing into use the best tools and the best method of handling material. It would be taken for granted by both that anything that goes to the improvement and upkeep of these things would be a necessary expenditure or a wise investment. The ordinary management, however, would not think of applying the same laws of upkeep and improvement to the personal equipment. . . .

<sup>1</sup>From address before Society to Promote the Science of Management. Taylor Society Bulletin, November, 1915.

Only actual comparison of the mechanical and other developments in this establishment with those in the next best establishment in the men's clothing industry would suffice to prove this point. The industry generally is not in a very advanced state. The usual type of management is at the best only beginning to realize the existence of the personal side. As a result, machinery and equipment are almost universally limited to a few undeveloped or semideveloped types, regardless of whether or not they are most suitable for the purpose in the hands of the individual operator. In practically all these factories you will find only a few types of machines, and these set up and equipped as they come from the manufacturers and running at haphazard speeds. Shears and all other tools are any which the employee chooses to furnish for himself.

In the Clothcraft Shops, working from the personal point of view, not only are tools developed and prescribed with regard to their suitability for the purpose of individual accomplishment, but all tools are furnished and maintained by the management. Fully 50 per cent of the different types of machines in use at the Clothcraft Shops are not, as far as is known, used in any other establishment in the industry, and practically every machine in use has been developed so as to be specially adapted for its particular purpose in the hands of the individual who uses it. In like manner the proper handling of materials and the installation of other methods developed under scientific management have been introduced in this establishment as necessary steps in the development of the highest efficiency of the individual. . . .

All responsibilities of the management in the direction of personal service, directed toward the welfare and development of the individual, are part of the function of employment. For the purpose of administering this function the Clothcraft Shops of The Joseph and Feiss Company have established an Employment and Service Department. In this organization this department is considered one of the most important adjuncts to the management.

While, as mentioned above, hiring is only a small part of the function of employment, nevertheless, the solution of the problem of selection is of great importance in its bearing on the whole future development of the worker. All applicants for positions are interviewed by one of the heads of the Employment and Service

Department of the Clothcraft Shops. Certain specific information concerning the applicant is obtained in every case and entered on a blank for the purpose. Information deemed essential consists of:

- Name and address.
- Date of application.
- Date and place of birth.
- Date of immigration, if foreign born.
- Parentage.
- Languages spoken.
- Education.
- Whether married or single.
- Number in family.
- Wage contribution to family support.
- Record of previous employment.

The idea should be to keep such records as simple as possible—only the important details being entered.

Languages spoken may be important in many organizations for various reasons. In this establishment English-speaking applicants are given preference. In case employment should be given to an applicant who does not understand English, the applicant must agree to attend one of the classes in English which are held at the factory.

The Board of Education of the city of Cleveland has coöperated by furnishing teachers and textbooks for these classes. Where applicants do not speak the English language it has often been found that their residence in the country, and, consequently, their employment, is considered merely temporary by them. In the case of those who do not speak the English language it has been found very difficult to impart instructions and to obtain proper standards of output and quality. Of thirty-five employees (out of a total of nearly 800) who have not sufficient knowledge of English to understand instructions thoroughly only one has reached efficiency equal to that of the best doing the same kind of work. Eight of this number have reached efficiency equal to less than the average, and the remaining twenty-six are the least efficient at their respective operations. Moreover, people who cannot speak the same language cannot understand each other thoroughly, and therefore can never attain that state of friendly feeling which is the basis of coöperation and spirit.

The matter of wage contribution is important. Other things being equal, preference should be given to those who have to support themselves or whose contribution to the family income is a necessity. The custom of contributing the entire earnings to the family income is often an important element in inefficiency, especially where the contribution is in whole or in part unnecessary. Younger women who live at home are often required to turn over the entire contents of their pay envelopes to the head of the family, even where such a contribution is not necessary. By depriving the worker of the use of his earnings, the incentive toward efficiency is removed and ambition destroyed. Cases of this kind are being constantly handled by the Employment and Service Department. A home visit by one of the staff has always resulted in an agreement being reached with the parents by which a stipulated sum was paid into the family exchequer and the remainder of the earnings kept by the employee in question and deposited in the Clothcraft Penny Bank. Such an arrangement has always proved beneficial and has developed an increase of efficiency ranging from 20 per cent upward. A case in point is that of Tillie B., who had been the subject of a great deal of attention over a long period of time for the purpose of increasing her earnings, which averaged 13 cents per hour. After an arrangement such as mentioned above had been made, Tillie's earnings immediately jumped and soon reached 22 cents an hour, which she held until she left the organization to be married.

Information as to past employment is important as a record of experience and earnings. The number of positions held is also an indication as to whether or not the applicant is a floater. For purposes of reference this information is of little or no value and is never used at the Clothcraft Shops. Wherever possible, however, applicants give as their references members of the Clothcraft organization. This tends to keep alive in the organization an active interest in the kind of new employees. It is, moreover, a good indication of the applicant's character, since although a person cannot always be judged by his family, he can generally be judged by his friends.

The interviewing of applicants is important and requires considerable tact, judgment, and experience. Ample space should be left on every application form for making notes as to the individual's special qualifications as well as any other circumstances surrounding

the case. As judgment is essential, and as judgment is influenced by immediate impression, in this establishment no one is employed on the date of application. Postponement of selection tends to bring all applicants in their proper relationship in the mind of one who has the responsibility of their selection. This method, moreover, tends to reduce the number of floaters who otherwise might get on the pay roll.

Application records are classified as to sex, age, and apparent suitability. When a position is to be filled, one or more applicants are sent for. A definite time is set for their appearance, and self-addressed postal cards are inclosed to be mailed in case appointments cannot be kept. At this time selection is made for immediate employment, and the fitness of the applicant is more definitely determined.

As a rule, in industrial establishments, where the question arises at all, only fitness for the work is considered. There are, however, two kinds of fitness to be considered, provided a person is suited for industry at all; one is fitness for the position; the other is fitness for the organization. Of these the latter is by far the more important.

Fitness for the organization is chiefly a question of character. Every organization has a distinct character of its own, which is often recognized as being a tangible business asset. It is essential, therefore, that every member of the organization have a character sufficiently developed or capable of development to be in harmony with the character of the organization. This is the basis of *esprit de corps*. No matter how skilled or fitted one may be to do a given piece of work, if he is out of harmony with the spirit or character of the organization, he will be an everlasting detriment to himself and all others in the organization who come in contact with him.

The interview of the applicant by a trained head of the Employment and Service Department is the basis of predetermining as far as possible both the fitness for a position and for the organization. In judging fitness for a position, past experience, where there is any, is sometimes a guide. At the best, however, it is a guide of only doubtful value. Personal choice also can be taken in some instances as a guide. This predilection furnishes in itself a valuable incentive. Often, however, it is a case of bringing the child up on candy because he likes it. When considered at all, it is important to weigh carefully all the reasons for the predilection.

The applicant's fitness for the organization, while more important, is more readily predetermined by interview. The interview at the time of employment is very thorough and designed to explain to the prospective employee the character of the organization and its policies, and the responsibilities of the organization to the employee as well as the responsibility of the employee to the organization.

As the aim of the Employment and Service Department is to keep every position in the organization filled with fit men and women, the question of physical and mental fitness of the individual is of prime importance. For the physical needs at the Clothcraft Shops a complete medical department is maintained as part of the Employment and Service Department. A graduate nurse is in direct charge of this work. The equipment includes a dispensary, separate rest rooms, a waiting room, and a consultation room for the factory physicians. The medical staff consists of a physician, an oculist, and a dentist. The physician is at the factory three mornings a week, the oculist two mornings, and the dentist one morning. All medical work done at the factory is paid for by the company. Outside service of the factory physician is furnished to employees and their families at special rates, except in instances where the Employment and Service Department recommends treatment at the company's expense. In order to facilitate physical examinations required, the time of taking on new employees is being regulated so as to coincide with the time that the physician spends at the factory. Physical examinations of all members of the organization are repeated annually or with greater frequency if there is cause.

The eye examination is of the greatest importance in considering applicants for certain positions. A preliminary examination is made by the nurse in order to discover any obvious defects of vision. Arrangements have been made by which, in case the oculist later prescribes glasses, they can be procured from a first-class optician at half the regular price. One of the greatest obstacles in connection with this work is the fact that many people who are in need of proper glasses have had glasses supplied to them by optical stores or by itinerant vendors without the advice of a practicing oculist. In most cases the trouble has only been aggravated. The benefits of an eye examination and the prescribing of proper glasses are readily apparent. In one case a young woman had worn the same glasses

for a number of years. She had obtained them from a dealer whose business enterprise included the sale of glasses and jewelry. The young woman realized thoroughly that her eyesight was poor and complained constantly of eyestrain and headaches. She was an employee of the firm for a number of years and had always been more or less inefficient. Examination of her eyes by the factory oculist proved not only that her eyesight was very poor but that the glasses which she had been wearing for six years were fitted with nothing but plain window glass. Fitting her with proper glasses not only entirely eliminated the headaches, but, within a period of a few weeks, resulted in an increase in efficiency to a standard equal to the best. . . .

Accidents are not of the major kind in the clothing industry, and even minor accidents have been practically eliminated at the Clothcraft Shops by a thorough system of safety devices and instruction. There are naturally, however, a number of cases where fingers are pricked in handling needles or where other minor injuries are incurred either away from or at work. Ordinarily these things are neglected and cause a great deal of inconvenience and much loss of time due to infections. Instructions are given that no one should be permitted to work with the slightest scratch or the slightest ache or pain, or any indication whatever of illness, without consulting the nurse. This has not only cut down the time lost from infections to almost nil but has also made it possible to forestall a great number of incipient cases of illness. This precautionary measure, together with the medical work in general, has undoubtedly been the means of keeping the working force of the Clothcraft Shops absolutely free from all epidemics that have swept through the community in the past few years.

Only one who has gone deeply into the question of health in its relation to efficiency can realize the loss occasioned by lack of knowledge and attention to even the simplest rules of hygiene. A great deal of work is constantly required to educate people to realize the necessity of fresh air, proper diet, and regular hours, lack of attention to one or all of which is often the cause of inefficiency. What can be done by working along these lines is well illustrated by the following cases. At the time medical examinations were first installed at the Clothcraft Shops five young women were selected, all having

been on the same operation from one to six years. These five had a record for absence, tardiness, and general inefficiency much worse than any of the other forty or fifty on the same operation. It was found that all five were accustomed to sleeping with windows closed at night and took no outdoor exercise at any time. All neglected the simple rules of diet, and two were accustomed to hurry away from home every morning without breakfast. One was found to be in need of eyeglasses. All complained of not feeling fit when they came to work in the morning and complained constantly of headaches and a general debility, which naturally resulted in much absence from work. The cases were interviewed separately, proper advice was given, and the ultimate results of irregularity and inefficiency were thoroughly gone into. By consistent follow-up the advice was soon accepted by all, with the result that tardiness and absence were practically eliminated in all cases, and efficiency was increased from 20 to 50 per cent.

One phase of this work is worthy of special mention. No one who has ever been in actual touch with the men and women of an industrial organization has failed to run across the case of the man who is down and out because of long sickness in his family. Doctor's bills and bills for medicines are rapidly getting him deeper and deeper in debt, or he may be brooding over what he thinks to be the last lingering illness of one of his family. A man with a load such as this can seldom hold up his end in either output or quality. In the vast number of cases an investigation will show that his troubles can easily be alleviated. He is often the prey of an unscrupulous practitioner or some fraudulent fake who is bleeding the family for every cent that it can scrape together. Very often the family is despairing of medical assistance and is found to be squandering a large portion of its income on fake remedies at the instigation of the ignorant advice of neighbors or under the influence of the advertising carried in unscrupulous newspapers. The prevalence of these conditions is of such amazing extent as to cry for public attention. Unfortunately medical ethics seems too unethical to deal with the situation. By reason of its far-reaching effect, the handling and prevention of such cases must be considered one of the important accomplishments of the medical service of the Clothcraft Shops. . . .



A great deal has been said and written about psychological tests for the purpose of selection, but the little that has been done of practical value has been limited almost entirely to a few tests for special aptitudes where special aptitudes are required. For the present, at least, such tests, even when practically developed, can be used only for the determination of individual limitations. At the Clothcraft Shops investigations and experiments have been carried on for this purpose. The tests that are being developed consist of general-intelligence tests, including a test for ability to follow instructions and a series of tests for dexterity. Professor Walter Dill Scott of Northwestern University has been retained for the purpose of assisting in the development of these tests. Recently a series of tests were given under his direction with the assistance of Professor Henry A. Seager of Columbia University. Twenty-one subjects were chosen for the purpose and included members of the organization holding executive positions and operatives of different degrees of efficiency in various kinds of work. In practically every case the results of the tests checked up accurately with the estimate of general intelligence and dexterity based on records and personal acquaintance over a long period of time.

The object of these tests is twofold. In the first place, with the best of care errors are bound to occur in original selection and placement. People are often placed on work for which they are not at all suited, and some are occasionally selected who are mentally unfit for the industry. This under no circumstances means that all the mentally deficient are unfit. There are, of course, all kinds of mental deficiencies, and there are a great many different kinds of work in most industrial establishments that can be done as efficiently by the mentally subnormal as by the normal. The human make-up is so complex that many instances have been found where a normal individual was incapable of reaching the same efficiency in certain kinds of work as a subnormal had reached.

Several cases were taken at the Clothcraft Shops of people who were apparently deficient mentally. A series of tests was made by the Binet method in order to confirm this conviction and in order to get an approximate rating of their mental capacity. In most instances one who has not had intimate acquaintance with individual cases over a long period of time would not suspect any mental deficiency. A

case in point is that of a girl who had been in the employ of the firm for about four years. Being employed rather young, she was put on an operation of the simplest kind. While on this operation she became very efficient. The result was that she was advanced and for another year was tried on various operations without being able to make good. By this time everybody had become more or less disgusted with Mary at home and at the factory, and Mary quit to find other work. She returned in a few months, and as her spirit was good it was decided to give her another trial at machine work. Mary utterly failed to progress in spite of her apparent best efforts and the special attention given her for the purpose. It was then decided to try her at an operation where she was required to follow certain lines of the garments, trimming off surplus goods with hand shears—an operation that is simple from the point of view of the dexterity and intelligence required. Mary immediately began to make progress, and her earnings are averaging with the best. This is a typical case showing the waste of time and effort which it is hoped will be minimized with the assistance of tests. It is the aim to use the tests as an aid in selection, to avoid placing people who are either normal or subnormal on kinds of work for which they are very likely to prove unfit.

The purpose of these tests in the second place is somewhat different, but it is of very great importance in an organization such as that of the Clothcraft Shops. It is the practice of this organization to fill positions of clerical or executive nature, and in fact all better positions of any kind, by advancement. By this method a considerable percentage of the organization is moved up during a year's time. At the best a large number of mistakes have been made by advancing individuals to positions beyond their capacity. This, of course, involves eventually a reduction in position or loss of the individual to the organization. In any case the organization has suffered by a position poorly filled, and the individual, as well as those responsible for his training, has gone through a period of discouragement which often leaves a permanent effect. It is hoped by means of these tests to minimize these errors. . . .

Whenever possible the workers should be trained to perform more than one kind of work. In this way they can be used to help out in cases of emergency, some of which occur daily in every large

establishment because of absences or other reasons. In the Clothcraft Shops all those willing to learn other work are given opportunity to do so and are paid a retainer while learning. All employees who are capable of helping out on an operation are carefully listed, and a definite hourly retainer is paid them whenever they do work on which they are not able to earn as much as on their regular operation. At all times the normal working force should be maintained, except only under such conditions as are forced upon the industry and beyond its control. Where there is a temporary lack of orders, due to industrial depression, seasonal fluctuations, and the like, the number of employees should not be cut down, but the number of hours of employment should be reduced equally throughout the whole organization. At the Clothcraft Shops this policy was strictly adhered to during the recent industrial depression, which reduced its normal working hours by approximately 15 per cent for a period of six months. While the percentage of quitters for this period was noticeably increased, nevertheless this increase was diminutive as compared to the number it would have been necessary to lay off had another policy been followed. We believe, moreover, the duty of providing steady employment under all possible conditions is a moral responsibility to the community at large.

The seasonal character of some industries is a well-recognized part of this problem. There is no doubt that in order to overcome this obstacle a great deal of public education is necessary. The fact remains, however, that the problem can for the greater part be solved by the industry itself. For this purpose purchases must be standardized and the purchasing policy itself so developed that a good proportion of orders can be anticipated.

In this connection one of the most important things is the sales policy. Many businesses, even though having a highly developed manufacturing organization, have not a sales policy or sales organization worthy of the name. It is only in exceptional instances that the sales policy and the manufacturing policy are properly correlated. Ordinarily the sales department is administered with entire disregard of its most important function, viz., to market a product that will permanently be of most profit to the entire organization. The Joseph and Feiss Company, in order to meet the problem of furnishing steady employment, have for some time past conducted an advertising

campaign concentrating on certain staple numbers. The volume of sales that has resulted has been sufficient under normal conditions to provide steady employment when other establishments in the same industry have been shut down. As to this phase of the problem, however, the surface has, as yet, only been scratched. The men who hold the purse strings must sooner, or later learn that the correct point of view, both morally and for the purpose of permanent return not only to themselves but to all the organization, involves the realization that the factory does not exist for the purpose of turning out for a temporary profit whatever it is easiest to sell, but that the sales force is part of the manufacturing organization to market whatever it can most steadily and, therefore, most profitably produce. . . .

From the record of absentees and tardies it is shown that during the first six months of 1915 the average number of tardies was only two and one-half persons per day. This is equal to one third of 1 per cent of the working force. For purposes of accurate follow-up, absences are classified as excusable and inexcusable. The excusable absences averaged a little over seven persons per day, or nine tenths of 1 per cent of the working force. The inexcusable absences averaged only a little less than four per day, or five tenths of 1 per cent. The total absentees per day averaged eleven, or only 1.4 per cent.

In regard to quitters a little more explanation is necessary. Very few people realize the tremendous cost to industry from this cause. Various estimates of this cost have been made. These estimates vary from \$50 to \$200 per person, depending on the nature of the work and character of employee obtainable and the percentage of old employees who are rehired. Taking even the lowest possible estimate, it would seem that any reasonable outlay of both money and effort for the purpose of reducing this industrial and social waste would be justifiable. At the Clothcraft Shops, in recognition of the tremendous loss from this source and the consequent value of notice in case of a contemplated severance from the organization, such notice is paid for at the rate of an amount equal to a day's pay for every week's notice, but not in any case to exceed an amount greater than four days' pay. . . .

Nothing shows more clearly the progress which has been made in this respect at the Clothcraft Shops than the record of "labor

turnover" for the five years from 1910 to 1914 inclusive, as shown in Table 1.

TABLE 1. LABOR TURNOVER, 1910-1914

YEAR	STAND. PAY ROLL	NEW HANDS	PER CENT
1910 . . . . .	1044	1570	150.3
1911 . . . . .	951	807	84.8
1912 . . . . .	887	663	74.7
1913 . . . . .	874	569	65.1
1914 . . . . .	865	291	33.5

These records tell their own story. It may be also worthy of note that over one third of the members of the Clothcraft organization have been in the continuous employ of the company for a period of five years or more. It is practically impossible to obtain accurate figures as to normal labor turnover. In the few instances where figures are available, progress has already been made. In the case of one large concern, in the men's clothing industry, the number of people employed for 1914 amounted to 115 per cent of the pay roll, which is undoubtedly better than the average in the industry. The following relating to a somewhat similar industry is from the report of the Federal Industrial Relations Commission (page 166):

An investigation of the cloak and suit industry in New York showed the maximum number of employees in sixteen occupations during any week of the year to be 1952. Actually, however, the pay rolls showed that 4000 people were employed in these occupations. . . .

The open road to talent is an essential to every successful organization. At the Clothcraft Shops the road is not only open but every possible aid is given for advancement. Practically all positions in the organization, including clerical and executive positions, are filled by those who by reason of sheer personal merit have come up from the ranks.

One of the most important functions of the Employment and Service Department is to develop organization spirit and free expression of personal and public opinion. It forms a direct channel of expression from its source to the ear of the management. In fact the chief purpose of a scientifically organized department is nothing

more than the development of that intimate personal contact so necessary to management. At the Clothcraft Shops about one fifth of the total number of employees come daily in contact with the Employment and Service Department. All cases where direct contact with the management would be beneficial are immediately referred to it. This requires constant daily contact of the management with the department, and brings it into intimate relationship with a great many more cases than would be possible in the average organization of much smaller size. Wherever the management assumes the policy of the closed door, this department may well be shut down.

Results cannot be accomplished in the spirit of charity, but must emanate entirely from a sense of justice. It must be understood that work along the lines described above can never take the place of wages. Such work must have as a reason for its existence not only increased efficiency but the increased reward to which increased efficiency is entitled. The progress of the Clothcraft Shops in respect to wages and efficiency from June, 1910, to January, 1915, is shown by an increase in production of 42 per cent; an increase in the average individual hourly wages of 45 per cent, weekly wages 37 per cent; and a decrease in total manufacturing cost of about 10 per cent. During this period the weekly working schedule was reduced from fifty-four to forty-eight hours.

It is our belief that results, such as these, are obtainable only when scientific management is scientifically applied. Scientific management will live if for no other reason than that it has faced the problem squarely and recognizes that the science of management is the science of handling men.

RICHARD A. FEISS

## XIV

### SCIENTIFIC MANAGEMENT AND DICTATORSHIP OF THE PROLETARIAT<sup>1</sup>

**T**HANKS to the peace obtained,—in spite of its oppressiveness and all its insecurity,—the Russian Soviet Republic is enabled for a certain time to concentrate its efforts on the most important and most difficult side of the socialist revolution, the problem of organization.

This problem is presented clearly and precisely to the masses in the fourth section of the resolution adopted at the extraordinary congress of the Soviets held at Moscow on March 16, 1916, the section which urges self-discipline of the workers and a merciless struggle against chaos and disorganization. . . .

In every socialist revolution—and hence also in the socialist revolution in Russia inaugurated by us on November 7, 1917,<sup>2</sup>—the main task of the proletariat and of the poorest peasantry led by it consists in the positive and constructive work of establishing an extremely complex and delicate net of newly organized relationships covering the systematic production and distribution of products which are necessary for the existence of tens of millions of people. The successful realization of such a revolution depends on

<sup>1</sup>Extracts from address by Nikolai Lenin, Russian Communist Premier, in June, 1919, forecasting the decrees of the Bolshevik government issued the following February. As a result of the confiscation of factories without compensation to the owners, resulting in destruction of credit and the breakdown of discipline, Lenin announced in this speech the resort to compulsory labor in factories, the dictatorship of industry by the leaders of the communist army, a proposed introduction of scientific management, and the desperate predicament that followed the expulsion of business management and the attempt of the Soviets to operate the factories. (See Introduction, p. x.) Translated for the Rand School of Social Science.

<sup>2</sup>November 7, 1917, is the date of the successful Bolshevik coup d'état. The Kerensky coalition government was forced to abdicate on that day, and the Soviet government, with the Bolshevik leaders, Nikolai Lenin and Leon Trotsky, at the helm, was instituted in its place.

the original historical creative work of the majority of the population, and first of all of the majority of the toilers. The victory of the socialist revolution will not be assured unless the proletariat and the poorest peasantry manifest sufficient consciousness, idealism, self-sacrifice, and persistence. With the creation of a new type of state, —the Soviet,—offering to the oppressed toiling masses the opportunity to participate actively in the free construction of a new society, we have solved only a small part of the difficult task. The main difficulty is in the economic domain: to raise the productivity of labor, to establish strict and uniform state accounting and control of production and distribution, and actually to socialize production. . . .

We are now confronted by the third problem, which is the most urgent and which characterizes the present period—the industrial organization of Russia. We had to deal with it and have been *solving* it ever since November 7, 1917. But heretofore, as long as the resistance of the exploiters manifested itself in open civil warfare, the problem of management could not become the principal, the central, problem.

At present it has become the central problem. We, the Bolshevik party, have convinced Russia. We have won Russia from the rich for the poor, from the exploiters for the toilers. And now it is our task to manage Russia. The special difficulty of the present period consists in understanding the peculiarities of the transition from the problem of convincing the people and suppressing the exploiters by force to the problem of management. . . .

“Keep accurate and conscientious accounts; conduct business economically; do not loaf; do not steal; maintain strict discipline at work.” These slogans, which were justly ridiculed by revolutionary proletarians when they were used by the bourgeoisie to cover its domination as a class of exploiters, have now, after the overthrow of the bourgeoisie, become our urgent and principal slogans. On the one hand, the practical realization of these slogans by the toiling masses is the sole condition for the salvation of the country, . . . and, on the other hand, the practical realization of these slogans by the Soviet power, with its methods, and on the basis of its laws, is necessary and sufficient for the final victory of socialism. This, however, is not comprehended by those who contemptuously refuse to urge such “common” and “trivial” slogans. In our



agricultural country, which only a year ago overthrew czarism and less than half a year ago freed itself from the Kerenskys, there remained, naturally, a good deal of unconscious anarchism, which is increased by the bestiality and barbarity accompanying every prolonged and reactionary war, and a good deal of despair and aimless anger has accumulated. If we should add to this the treasonable policy of the servants of the bourgeoisie—the Mensheviks, the Social-Revolutionists of the Right, etc.—it will become clear that energetic and persistent efforts must be exerted by the best and most conscious workers and peasants to effect a complete change in the mood of the masses and to turn them to a regular, uninterrupted, and disciplined labor. Only such a change accomplished by the masses of proletarians and near-proletarians can complete the victory over the bourgeoisie, and especially over the more persistent and numerous peasant bourgeoisie. . . .

Of decisive importance is the organization of strict and uniform accounting and control of production and distribution. But we have not yet effected accounting and control in those enterprises and in those branches and departments of economic effort which we have taken away from the bourgeoisie. Without this there can be no question of the second condition, just as essential to the establishment of socialism; that is, the increase of the productivity of labor on a national scale. . . .

Heretofore measures for the immediate expropriation of the expropriators were preëminent. At present preëminence must be given to the organization of accounting and control in those enterprises in which the capitalists have already been expropriated. Were we to attempt now to continue the expropriation of capital at the same rate as heretofore, we would surely be defeated. It is clear to every thinking person that our work of organizing proletarian accounting and control has not kept pace with the work of the direct expropriation of the expropriators. If we now turn all our efforts to organizing accounting and control, we shall be able to solve this problem; we shall overcome our shortcomings and win our "campaign" against capitalism. . . .

We have been frequently reproached by the servants of the bourgeois for conducting a "Red Guard" attack on capitalism. An absurd reproach, worthy indeed of servants of the money pouch!

The "Red Guard" attack on capitalism was at that time absolutely dictated by the circumstances. First, capitalists were offering military resistance through Kerensky and Kransnov, Savinkov and Goltz (Gegechkori is even now offering such resistance), Dutov and Bogajevsky.<sup>1</sup> Military resistance can be crushed only by military means, and the "Red Guards" were contributing to the noblest and greatest cause in history, the cause of emancipation of the exploited toilers from the oppression of the exploiters.

Secondly, we could not then give preëminence to the method of management instead of the methods of suppression, because the art of management is not inherent in people but is gained through experience. At that time we did not have this experience. We have it now!

Thirdly, then we could not have at our disposal specialists in different branches of science, for they were either fighting in the ranks of the Bogajevskys or were still in a position to offer systematic and persistent passive resistance through sabotage.

Does this mean that the "Red Guard" attack on capital is the right method always in all circumstances, and that we have no other methods of combating capitalism? To think so would be too naïve. We have won with light cavalry, but we also have heavy artillery at our disposal. We have been winning by methods of suppression; we will be able to win also by methods of management. We should be able to change the methods of fighting with the change of circumstances. We do not for a moment reject the "Red Guard" suppression of the Savinkovs and Gegechkoris as well as of any other bourgeois counter-revolutionists; but we will not be so stupid as to give preëminence to the "Red Guard" methods.

At present, when the epoch of "Red Guard" attacks is in the main completed (and completed victoriously), it is becoming urgent for the proletarian state authority to make use of the bourgeois specialists for the purpose of reploting the soil so that no bourgeoisie can grow on it.

This is a peculiar stage of development, and in order definitely to defeat capitalism we should be able to adapt the forms of our struggle to the peculiar conditions of such a period.

<sup>1</sup> Persons representing bourgeois counter-revolutionary elements, and socialist groups actively opposing the Bolsheviks and directly or indirectly aiding the counter-revolutionists.

Without the direction of specialists in different branches of science, such as technical men, the transformation toward socialism is impossible, for socialism demands a conscious mass movement toward a comparatively higher productivity of labor on the basis which has been attained by capitalism. Socialism must accomplish this movement forward in its own way, by its own methods ; to make it more definite—by Soviet methods. But the specialists are inevitably bourgeois, on account of the whole environment of social life which made them specialists. If our proletariat, having obtained power, had rapidly solved the problem of accounting, control, and organization on a national scale (this was impossible on account of the war and the backwardness of Russia), then having crushed the sabotage of the capitalists, we would have obtained, through uniform accounting and control, the complete submission of the bourgeois specialists. In view of the considerable delay in establishing accounting and control, although we have succeeded in defeating sabotage, we have not yet created an environment which would put at our disposal the bourgeois specialists. Many saboteurs are coming into our service, but the best organizers and the biggest specialists can be used by the state either in the old bourgeois way (that is, for a higher salary) or in the new proletarian way (that is, by creating such an environment of uniform accounting and control as would inevitably and naturally attract and gain the submission of specialists). We are forced now to make use of the old bourgeois method and to agree to a very high remuneration for the services of the biggest of the bourgeois specialists. All those who are acquainted with the facts understand this, but not all give sufficient thought to the significance of such a measure on the part of the proletarian state. It is clear that such a measure is a compromise, that it is a defection from the principles of the Paris Commune and of any proletarian rule, which demand the reduction of salaries to the standard of remuneration of the average workers—principles which demand that “career hunting” be fought by deed, not by words.

Furthermore, it is clear that such a measure is not merely a halt, in a certain part and to a certain degree, of the offensive against capitalism (for capitalism is not a quantity of money but a definite social relationship) but also a step backward by our socialist Soviet state, which has from the very beginning proclaimed and carried on

a policy of reducing high salaries to the standard of wages of the average worker.

Of course the lackeys of the bourgeoisie, particularly of the petty kind, like the Mensheviks and the Social-Revolutionists of the Right, will sneer at our admission that we are taking a step backward. But we should pay no attention to sneers. We must study the peculiarities of the highly difficult and new road to socialism without concealing our mistakes and weaknesses. We must try to overcome our deficiencies in time. To conceal from the masses that attracting bourgeois specialists by extremely high salaries is a defection from the principles of the Commune would mean that we had lowered ourselves to the level of bourgeois politicians who rule by practicing deception. To explain openly how and why we have taken a step backward, and then to discuss publicly ways and means to overcome our deficiencies, is to educate the masses and to learn from experience—to learn together with them how to build socialism. There has hardly been a single military campaign in history in which the victor has not made mistakes, suffered partial defeats, and temporarily retreated at some time. And the "campaign" against capitalism which we have undertaken is a million times more difficult than the most difficult military campaign, and it would be foolish and disgraceful to become dejected on account of a temporary and partial retreat.

Let us take up the question from the practical side. Let us assume that the Russian Soviet Republic must have a thousand first-class scientists and specialists, of recognized skill and with practical experience in different departments of science, to direct the work of the people in order to accomplish most quickly the economic rehabilitation of the country. Let us assume that these great "stars" must be paid 25,000 rubles each per annum. Let us assume that this sum just be doubled (supposing premiums to be granted for particularly successful and rapid accomplishment of the most important tasks of organization and technic) or even made four times as large (supposing that we must get several hundred better-paid foreign specialists). Well, then, can this expenditure of 50,000,000 or 100,000,000 rubles a year for the reorganization of the work of the people along the lines of the latest scientific developments be considered excessive or unbearable for the Soviet Republic? Of

course not. The vast majority of the enlightened workers and peasants will approve such an expenditure, knowing from practical life that our backwardness compels us to lose billions, and that we have not yet attained such a high degree of organization, accounting, and control as would cause the universal and voluntary participation of these "stars" of the bourgeois intelligentsia<sup>1</sup> in our work.

Of course there is another side to this question. The corrupting influence of high salaries is beyond dispute—both on the Soviets (the more so since the swiftness of the revolution made it possible for a certain number of adventurers and thieves to join the Soviets, who, together with the incapable and dishonest among certain commissaries, would not object to becoming "star grafters") and on the mass of workers. But all thinking and honest workers and peasants will agree with us and will admit that we are unable to get rid at once of the evil heritage of capitalism; that the Soviet Republic can be freed from a tribute of 50,000,000 or 100,000,000 rubles (a tribute for our own backwardness in the organization of accounting and control from the bottom up) only by organization, by increasing discipline among ourselves, by getting rid of all those who "keep the traditions of capitalism," that is, the loafers, parasites, and grafters. If the enlightened and advanced workers and peasants succeed, with the help of the Soviet institutions, in organizing and disciplining themselves and in creating a powerful labor discipline in one year, then we will in one year do away with this "tribute" (which may be reduced even earlier), depending on the measure of success attained in creating labor discipline and organization among the workers and peasants. The sooner we ourselves, workers and peasants, learn better labor discipline and a higher technic of toil, making use of the bourgeois specialists for this purpose, the sooner we will get rid of the need of paying tribute to these specialists.

Our work of organization, under the direction of the proletariat, of state accounting and control of production and distribution is considerably behind our work of direct expropriation of the expropriators. We understand this is fundamentally necessary for understanding the peculiarities of the present period and of the problems dictated by these to the Soviets. The center of gravity of the struggle with the bourgeoisie is shifted to the organization of

<sup>1</sup> Middle-class intellectuals form a separate entity in Russian society.

accounting and control. This must be taken into account in order to determine correctly the urgent economic and financial problems concerning the nationalization of banks, monopolization of foreign trade, state control of currency, the introduction of a satisfactory wealth and income tax from the proletarian standpoint, and the introduction of obligatory labor service.

We are extremely backward in regard to socialist reforms in these fields (and they are very important fields), and we are backward for no other reason than this—that accounting and control, in general, are not sufficiently organized. Of course this problem is one of the most difficult, and with the economic disorganization produced by the war its solution must take a long time, and it should not be overlooked that just here the bourgeoisie (and especially the numerous petty and peasant bourgeoisie) give us a good deal of trouble, disturbing the establishment of control—disturbing, for instance, the grain monopoly, gaining opportunities for speculation and speculative trade. What we have already decreed is yet far from adequate realization, and the main problem of today consists precisely in concentrating all efforts upon the actual, practical realization of the reforms which have already become the law, but have not yet become a reality.

In order to continue further the nationalization of the banks and to move steadily toward the transformation of the banks into centers of social bookkeeping under socialism, we must first of all be successful in increasing the number of branches of the People's Bank, in attracting deposits, in making it easier for the public to deposit and withdraw money, in removing the possibility of panics, in discovering and executing the grafters and crooks, etc. We must first actually accomplish the simplest tasks, organize well what is already in our possession—and only then prepare for the more complex.

We must improve and regulate the state monopolies in grain, leather, etc., which we have already established, and thereby *prepare* for the state monopolization of the foreign trade; without such a monopoly we shall not be able to "get rid of" foreign capital except by the payment of a "tribute." Whatever possibility of socialist construction exists depends on whether we shall be able to protect our internal economic independence during the transition period by paying some "tribute" to foreign capital.

We are also extremely backward in the collection of taxes in general and of wealth and income taxes in particular. The levying of contributions on the bourgeoisie—a measure which in principle is undoubtedly acceptable and deserving of proletarian approval—shows that we are in this respect still nearer to the methods of conquest [of Russia] from the rich for the poor than to the methods of management. But to become stronger and to make our position firm we must adopt the last-named methods; we must substitute for the contributions exacted from the bourgeoisie steadily and regularly collected wealth and income taxes, which will give more to the proletarian state and which requires of us greater organization and better-regulated accounting and control.

The delay in introducing obligatory labor service is another proof that the most urgent problem is precisely the preparatory organization work which, on the one hand, should definitely secure our gains and which, on the other hand, is necessary to prepare the campaign to “surround capital” and to “compel its surrender.” The introduction of obligatory labor service should be started immediately, but it should be introduced gradually and with great caution, testing every step by practical experience and, of course, introducing first of all obligatory labor service for the rich. The introduction of a labor record book and a consumption-budget record book for every bourgeois, including the village bourgeois, would be a long step forward toward a complete “siege” of the enemy and toward the creation of a really *universal* accounting and control over production and distribution.

The state, an organ of oppression and robbery of the people, left us as a heritage on the part of the people a great hatred for and distrust of everything connected with the state. To overcome this is a very difficult task, which only the Soviets can master, but which requires even from them considerable time and tremendous perseverance. This “heritage” has a particularly painful effect on the question of accounting and control—the fundamental question for a socialist revolution after the overthrow of the bourgeoisie. It will inevitably take some time before the masses begin to feel themselves free after the overthrow of the landowners and the bourgeoisie and before they comprehend—not from books, but from their own experience through the Soviets—that without thorough state accounting

and control of production and distribution the authority of the toilers, and their freedom, cannot last, and a return to the yoke of capitalism is inevitable. . . .

We have introduced labor control as a law, but it is barely beginning to be realized or even to penetrate the consciousness of the proletarian masses. That unaccountability in production and distribution is fatal for the first steps toward socialism, that it means corruption, that carelessness in accounting and control is a direct assistance to the German and Russian Kornilovs, who can overthrow the authority of the toilers only in case we do not solve the problem of accounting and control and who with the aid of the peasant bourgeoisie, the cadets, the Mensheviks, and the Socialist-Revolutionists of the Right are watching us, waiting for their opportunity—this is not adequately emphasized in our agitation and is not given sufficient thought and is not sufficiently discussed by the advanced workers and peasants. And as long as labor control has not become a fact, as long as the advanced workers have not carried out a successful and merciless campaign against those who violate this control or who are careless with regard to control, we cannot move from the first step [from labor control] to the second step toward socialism; that is, to the regulation of production by the workers.

A socialist state can come into existence only as a net of production and consumption communes, which keep conscientious accounts of their production and consumption, and economize labor, at the same time steadily increasing its productivity, thus making it possible to lower the workday to seven, six, or even less hours. . . .

To increase the productivity of labor we must first of all secure the material basis of a large industry: the development of the production of fuel, iron, machinery, and of the chemical industry. The Russian Soviet Republic is in such an advantageous position that it possesses, even after the Brest-Litovsk peace, colossal stores of ore [on the Ural]; of fuel in western Siberia [hard coal], in Caucasia and in the southeast [petroleum], in Central Russia [turf]; vast resources of lumber, water power, and raw material for the chemical industry [*karabugaz*]; and so on. The exploitation of these natural resources by the latest technical methods will furnish a basis for an unprecedented development of production.



Higher productivity of labor depends, first, on the improvement of the educational and cultural state of the masses of the population. This improvement is now taking place with unusual swiftness, but is not perceived by those who are blinded by the bourgeois routine and are unable to comprehend what a longing for light and initiative is now pervading the masses of the people, thanks to the Soviet organizations. Secondly, economic improvement depends on higher discipline of the toilers, on higher skill, efficiency, and intensity of labor, and its better organization. . . .

The most conscious vanguard of the Russian proletariat has already turned to the problem of increasing labor discipline. For instance, the central committee of the Metallurgical Union and the Central Council of the Trade Unions have begun work on respective measures and drafts of decrees. This work should be supported and advanced by all means. We should immediately introduce piece-work and try it out in practice. We should try out every scientific and progressive suggestion of the Taylor system; we should compare the earnings with the general total of production or the exploitation results of railroad and water transportation and so on.

The Russian is a poor worker in comparison with the workers of the advanced nations, and this could not be otherwise under the régime of the Czar and other remnants of feudalism. To learn how to work—this problem the Soviet authority should present to the people in all its comprehensiveness. The last word of capitalism in this respect, the Taylor system,—as well as all progressive measures of capitalism,—combines the refined cruelty of bourgeois exploitation and a number of most valuable scientific attainments in the analysis of mechanical motions during work, in dismissing superfluous and useless motions, in determining the most correct methods of the work, the best systems of accounting and control, etc. The Soviet Republic must adopt valuable scientific and technical advances in this field. The possibility of socialism will be determined by our success in combining the Soviet rule and the Soviet organization of management with the latest progressive measures of capitalism. We must introduce in Russia the study and the teaching of the Taylor system and its systematic trial and adaptation. While working to increase the productivity of labor, we must at the same time take into account the peculiarities of the transition period from

capitalism to socialism, which require, on the one hand, that we lay the foundation for the socialist organization of *emulation*, and, on the other hand, require the use of compulsion, so that the slogan of the dictatorship of the proletariat should not be weakened by the practice of a too mild proletarian government.

Among the absurd falsehoods which the bourgeois likes to spread about socialism is the one that socialists deny the value of *emulation*. In reality only socialism, destroying classes and, hence, the enslavement of the masses, for the first time opens up opportunities for *emulation* on a mass scale. And only the Soviet organization, passing from the formal democracy of a bourgeois republic to the actual participation in management of the toiling masses, for the first time puts emulation on a broad basis. This is much easier to accomplish on the political than on the economic field, but for the success of socialism the latter is the more important.

Let us take publicity as a means for stimulating *emulation*. . . . And we have hardly begun the immense and difficult, but also promising and important, work of stimulating *emulation* between the communes, of introducing reports and publicity in the process of the production of bread, clothing, etc., and of transforming the dry, dead bureaucratic reports into live examples—either repulsive or attractive. Under the capitalistic system of production the significance of an individual example, say of some group of producers, was inevitably extremely limited, and it was only a petty bourgeois illusion to dream that capitalism could be “reformed” by the influence of models of virtuous establishments. After the political power has passed into the hands of the proletariat and after the expropriation of the expropriators has been accomplished, the situation is radically changed, and—as has been many times pointed out by the most eminent socialists—the force of an example can for the first time exert a mass effect. Model communes should and will serve the purpose of training, teaching, and stimulating the backward communes. The press should serve as a weapon of socialist construction, giving publicity in all details to the successes of the model communes, studying the principles of their success, their methods of economy, and, on the other hand, “blacklisting” those communes which persist in keeping the “traditions of capitalism,” that is, anarchy, loafing, disorder, and speculation. Statistics under capitalism

were exclusively in the hands of government employees or narrow specialists; we must bring them to the masses, we must popularize them so that the toilers gradually learn to understand and to see for themselves what work and how much work is needed and how much rest they can have. In this way a comparison between the results of the enterprise of different communes will become a subject of general interest and study; the foremost communes will be immediately rewarded (by reducing the workday for a certain period, by raising the wages, offering them a greater quantity of cultural or *historical* advantages and treasures, etc.). . . .

No profound and powerful popular movement in history ever escaped paying a price to the scum; the inexperienced innovators have been preyed upon by adventurers and crooks, boasters and shouters; there have been stupid confusion, unnecessary bustle. Individual "leaders" would undertake twenty tasks at once, completing none of them. Let the poodles of bourgeois society, from Bielorossoff to Martov, yelp and bark on account of every additional splinter going to waste while the big old forest is cut down. Let them bark. That is what poodles are there for. We will go ahead, trying very cautiously and patiently to test and discover real organizers, people with sober minds and practical sense, who combine loyalty to socialism with the ability to organize quietly (and in spite of confusion and noise) efficient and harmonious joint work of a large number of people under the Soviet organization. Only such persons should, after many trials, advancing them from the simplest to the most difficult tasks, be promoted to responsible posts to direct the work of the people, to direct the management. We have not yet learned this. We will learn this.

The resolution of the last (Moscow) congress of the Soviets advocates, as the most important problem at present, the creation of "efficient organization" and higher discipline. Such resolutions are now readily supported by everybody. But that their realization requires compulsion, and compulsion in the form of a dictatorship, is ordinarily not comprehended. And yet it would be the greatest stupidity and the most absurd opportunism to suppose that the transition from capitalism to socialism is possible without compulsion and dictatorship. The Marxian theory has long ago criticized beyond misunderstanding this petty bourgeois-democratic and anarchistic

nonsense. And Russia of 1917-1918 confirms in this respect the Marxian theory so clearly, palpably, and convincingly that only those who are hopelessly stupid or who have firmly determined to ignore the truth can still err in this respect. Either a Kornilov dictatorship (if Kornilov be taken as the Russian type of a bourgeois Cavaignac) or a dictatorship of the proletariat—no other alternative is possible for a country which is passing through an unusually swift development, with unusually difficult transitions, and which suffers from desperate disorganization created by the most horrible war. All middle courses are advanced (in order to deceive the people) by the bourgeois, who are not in a position to tell the truth and admit openly that they need a Kornilov, or (through stupidity) by the petty-bourgeois democrats,—the Tchernovs, Zeretellis, and Martovs,—prattling of a united democracy, of the dictatorship of democracy, of a single democratic front, and similar nonsense. Those who have not learned even from the course of the Russian revolution of 1917-1918 that middle courses are impossible must be given up as hopeless.

On the other hand, it is not hard to see that during any transition from capitalism to socialism a dictatorship is necessary for two main reasons. In the first place, it is impossible to conquer and destroy capitalism without the merciless suppression of the resistance of the exploiters, who cannot be at once deprived of their wealth, of their advantages in organization and knowledge, and who will, therefore, during quite a long period inevitably attempt to overthrow the hateful (to them) authority of the poor. Secondly, every great revolution, and especially a socialist revolution, even if there were no external war, is inconceivable without an internal war, with thousands and millions of cases of wavering and of desertion from one side to the other and with a state of the greatest uncertainty, instability, and chaos. . . .

This historical experience of all revolutions, the universal historical, economic, and political lesson, was summed up by Marx in his brief, sharp, exact, and vivid formula: the dictatorship of the proletariat. And that the Russian revolution has correctly approached this universal historical problem has been proved by the victorious march of the Soviet organization among all the peoples and tongues of Russia. For the Soviet rule is nothing else than the

organized form of the dictatorship of the proletariat—the dictatorship of the advanced class awakening to a new democracy and to independent participation in the administration of the state, tens and tens of millions of exploited toilers who through their experience are discovering that the disciplined and class-conscious vanguard of the proletariat is their most reliable leader.

But “dictatorship” is a great word. And great words must not be used in vain. A dictatorship is an iron rule, with revolutionary daring and swift and merciless in the suppression of the exploiters as well as of the thugs [hooligans]. And our rule is too mild, quite frequently resembling putty rather than iron. We must not for a moment forget that the bourgeois and petty-bourgeois environment is offering resistance to the Soviet rule in two ways: on the one hand, by external pressure—by the methods of the Savinkovs, Goltzes, Gegechkoris, and Kornilovs, by conspiracies and insurrections, with their ugly “ideologic” reflection, by torrents of falsehood and calumny in the press of the Cadets, Social-Revolutionists of the Right, and Mensheviks; on the other hand, this environment exerts internal pressure, taking advantage of every element of decay, of every weakness, to bribe, to increase the lack of discipline, dissoluteness, chaos. The nearer we get to the complete military suppression of the bourgeoisie, the more dangerous become for us the petty bourgeois anarchic inclinations. And these inclinations cannot be combated simply by propaganda and agitation, by the organization of *emulation*, by the selection of organizers; they must also be combated by compulsion.

To the extent to which the principal problem of the Soviet rule changes from military suppression to administration, suppression and compulsion will, as a rule, be manifested in trials and not in shooting on the spot. And in this respect the revolutionary masses have taken, after November 7, 1917, the right road and have proved the vitality of the revolution, when they started to organize their own workmen’s and peasants’ tribunals before any decrees were issued dismissing the bourgeois-democratic judicial apparatus. But our revolutionary and popular tribunals are excessively and incredibly weak. It is apparent that the popular view of courts—which was inherited from the régime of the landowners and the bourgeoisie—as not belonging to the workers, has not yet been completely destroyed.

It is not sufficiently appreciated that the courts serve to attract all the poor to administration (for judicial activity is one of the functions of state administration); that the court is an organ of the rule of the proletariat and of the poorest peasantry; that the court is a means of training in discipline. There is a lack of appreciation of the simple and obvious fact that if the chief misfortunes of Russia are famine and unemployment, these misfortunes cannot be overcome by any outbursts of enthusiasm, but only by thorough and universal organization and discipline, in order to increase the production of bread for men and fuel for industry, to transport these in time, and to distribute them in the right way; that, therefore, responsibility for the pangs of famine and unemployment falls on everyone who violates the labor discipline in any enterprise and in any business; that those who are responsible should be discovered, tried, and punished without mercy. The petty bourgeois environment, which we will have to combat persistently now, shows particularly in the lack of comprehension of the economic and political connection between famine and unemployment and the prevailing dissoluteness in organization and discipline—in the firm hold of the view of the small proprietor that “nothing matters if only I gain as much as possible.”

This struggle of the petty-bourgeois environment against proletarian organizations is displayed with particular force in the railway industry, which embodies, probably, most clearly the economic ties created by large capitalism. The “office” element furnishes *saboteurs* and grafters in large numbers; the proletarian element, its best part, is fighting for discipline. But between these two elements there are, of course, many who waver, who are “weak,” who are unable to resist the “temptation” of speculation, bribery, and personal advantage, at the expense of the industry, the uninterrupted work of which is necessary to overcome famine and unemployment.

A characteristic struggle occurred on this basis in connection with the last decree on railway management, the decree which granted dictatorial (or “unlimited”) power to individual directors. The conscious (and mostly, probably, unconscious) representatives of petty-bourgeois dissoluteness contended that the granting of “unlimited” (that is, dictatorial) power to individuals was a defection from the principle of board administration, from the democratic and

other principles of the Soviet rule. Some of the Social-Revolutionists of the Left carried on a plainly demagogic agitation against the decree on dictatorship, appealing to the evil instincts and to the petty-bourgeois desire for personal gain. The questions thus presented are of really great significance: first, the question of principle, Is, in general, the appointment of individuals endowed with unlimited power, the appointment of dictators, in accord with the fundamental principles of the Soviet rule? secondly, In what relation is this case—this precedent, if you wish—to the special problems of the Soviet rule during the present concrete period? Both questions deserve serious consideration.

That the dictatorship of individuals has very frequently in the history of revolutionary movements served as an expression and means of realization of the dictatorship of the revolutionary classes is confirmed by the undisputed experience of history. The dictatorship of individuals has undoubtedly been compatible with bourgeois-democratic principles, but this point is always treated adroitly by the bourgeois critics of the Soviet rule and by their petty-bourgeois aides. On the one hand, they declare the Soviet rule simply something absurd and anarchically wild, carefully avoiding all our historical comparisons and theoretical proofs that the Soviets are a higher form of democracy—nay, more, the beginning of a socialist form of democracy. On the other hand, they demand of us a higher democracy than the bourgeois, and argue, "Individual dictatorship is absolutely incompatible with your Bolshevik [that is, socialist, not bourgeois] democratic principles, with the Soviet democratic principles."

Extremely poor arguments, these. If we are not anarchists, we must admit the necessity of a state (that is, of compulsion) for the transition from capitalism to socialism. The form of compulsion is determined by the degree of development of the particular revolutionary class, then by such special circumstances as, for instance, the heritage of a long and reactionary war, and then by the forms of resistance of the bourgeoisie and the petty bourgeoisie. There is, therefore, absolutely no contradiction in principle between the Soviet (socialist) democracy and the use of dictatorial power of individuals. The distinction between a proletarian and a bourgeois dictatorship consists in this: that the first directs its attacks against

the exploiting minority in the interests of the exploited majority; and, further, in this: that the first is accomplished (through individuals) not only by the masses of the exploited toilers but also by organizations which are so constructed that they arouse these masses to creative work of historic significance. The Soviets belong to this kind of organization.

With respect to the second question on the significance of individual dictatorial power from the standpoint of the specific problems of the present period, we must say that every large machine industry—which is the material productive source and basis of socialism—requires an absolute and strict unity of the will which directs the joint work of hundreds, thousands, and tens of thousands of people. This necessity is obvious from the technical economic and historical standpoint and has always been recognized as its prerequisite by all those who have given any thought to socialism. But how can we secure a strict unity of will? By subjecting the will of thousands to the will of one.

This subjection, if the participants in the common work are ideally conscious and disciplined, may resemble the mild leading of an orchestra conductor; it may also take the acute form of a dictatorship, if there is no ideal discipline and consciousness. At any rate, complete submission to a single will for the success of the processes of work organized on the type of large machine industry is absolutely necessary. This is doubly true of the railways. And just this transition from one political problem to another which in appearance has no resemblance to the first constitutes the peculiarity of the present period. The revolution has just broken the oldest, the strongest, and the heaviest chains to which the masses were compelled to submit. So it was yesterday. And today the same revolution—and indeed in the interest of socialism—demands the absolute submission of the masses to the single will of those who direct the labor process. . . .

We have successfully solved the first problem of the revolution. We saw how the toiling masses formed in themselves the fundamental condition of a successful solution—united efforts against the exploiters to overthrow them. Such stages as October, 1905,<sup>1</sup> and

<sup>1</sup> October, 1905, saw the beginning of the first Russian Revolution. It was during that month that the general strike was declared and the open struggle



March and November, 1917, are of universal historical significance.

We have successfully solved the second problem of the revolution—to awaken and arouse the downtrodden social classes which were oppressed by the exploiters and which only after November 7, 1917, have obtained the freedom to overthrow them and to begin to take stock and to regulate their lives in their own way. The “meeting-holding” of the most oppressed and downtrodden, of the least-trained toiling masses, their joining the Bolsheviks, their creating Soviet organizations everywhere,—this is the second great stage of the revolution.

We are now in the third stage. Our gains, our decrees, our laws, our plans, must be secured by the solid forms of everyday labor discipline. This is the most difficult, but also the most promising, problem, for only its solution will give us socialism. We must learn to combine the stormy, energetic breaking of all restraint on the part of the toiling masses with iron discipline during work, with absolute submission to the will of one person, the Soviet director, during work.

We have not yet learned this, but we will learn it.

The restoration of bourgeois exploitation threatened us yesterday through the Kornilovs, Goltzes, Dutovs, Gegechkoris, Bogajevskys. We defeated them. This restoration, the very same restoration, threatens us today in a different form, through the environment of petty-bourgeois dissoluteness and anarchism, in the form of ordinary, small, but numerous attacks and aggressions of this environment against proletarian discipline. This environment of petty-bourgeois anarchy we must and we will conquer.

The socialist character of the Soviet democracy—that is, of proletarian democracy in its concrete particular application—consists first in this: that the electorate comprises the toiling and exploited masses; that the bourgeoisie is excluded. Secondly, in this: that all bureaucratic formalities and limitations of elections are done away with; that the masses themselves determine the order and the time of elections and with complete freedom of recall of elected officials. Thirdly, that the best possible mass organization of the vanguard of the toilers—of the industrial proletariat—is formed,

between the revolutionary forces and the autocracy ensued. The Czar's government was forced to grant a constitution (October 30) and establish a parliamentary form of government (Duma).

enabling them to direct the exploited masses, to attract them to active participation in political life, to train them politically through their own experience; that in this way a beginning has been made for the first time actually to get the whole population to learn how to manage and to begin managing. . . .

This proximity of the Soviets to the toiling people creates special forms of recall and other methods of control by the masses which should now be developed with special diligence. For instance, the councils of popular education deserve the fullest sympathy and support as periodical conferences of the Soviet electors and their delegates to discuss and to control the activity of the Soviet authorities of the particular region. Nothing could be more foolish than turning the Soviets into something settled and self-sufficient. The more firmly we now have to advocate a merciless and firm rule and dictatorship of individuals for definite processes of work during certain periods of purely executive functions, the more diverse should be the forms and means of mass control in order to paralyze every possibility of distorting the Soviet rule, in order repeatedly and tirelessly to remove the wild grass of bureaucratism. . . .

Try to compare with the ordinary, popular idea of a "revolutionist" the slogans which are dictated by the peculiarities of the present situation: to be cautious, to retreat, to wait, to build slowly, to be mercilessly rigorous, to discipline sternly, to attack dissoluteness. Is it surprising that some "revolutionists," hearing this, become full of noble indignation and begin to "attack" us for forgetting the traditions of the November revolution, for compromising with bourgeois specialists, for compromises with the bourgeoisie, for petty-bourgeois tendencies, for reformism, etc. etc.? . . .

NIKOLAI LENIN

PREMIER, RUSSIAN SOVIET REPUBLIC

## XV

### PREMIUM AND BONUS SYSTEMS OF PAYMENT<sup>1</sup>

IT IS very difficult to distinguish between the premium and the bonus systems of remuneration, for the two names are used almost indiscriminately. The term "bonus" is, however, more frequently applied at the present time to any contingent payment, and any plan under which such payments are offered is likely to be called a "bonus" plan or system.

The first examples of such plans were, however, known as premium plans. Under them the extra payment or premium was generally a fixed proportion, usually a half, and almost never more than a half, of what the workers' regular wages would be for the number of hours or minutes by which he reduced the time formerly taken on an average to turn out a given amount of work. The essentials of the system were set forth by Mr. F. A. Halsey,<sup>2</sup> with whose name the premium system is most closely associated, in a paper read before the American Society of Mechanical Engineers in 1891.<sup>3</sup>

The essential principle is . . . as follows: the time required to do a given piece of work is determined from previous experience, and the workman, in addition to his usual daily wages, is offered a premium for every hour by which he reduces that time on future work, the amount of the premium being less than his rate of wages. Making the hourly premiums less than the hourly wages is the

<sup>1</sup>From Appendix B, "The Standard Rate in American Trade Unions," *Johns Hopkins University Studies in Historical and Political Science*, Series XXX, No. 2 (1912), pp. 235-241.

<sup>2</sup>Systems of payment involving the essential features of the "premium plan," that is, extra payments for time saved at rates below the regular rate for that time, had been occasionally used in the metal trades before Mr. Halsey's plan was proposed. Some of these were referred to as "bonus" plans. (*Transactions of the American Society of Mechanical Engineers*, Vol. VIII, p. 469; Vol. X, p. 622; Vol. XII, p. 767.)

<sup>3</sup>*Ibid.* Vol. XII, pp. 755 *et seq.* Paper, without discussion, *Economic Studies*, American Economic Association, Vol. I, No. 2 (1896).

foundation stone on which rest all the merits of the system, since by it if an hour is saved on a given product the cost of the work is less and the earnings of the workman are greater than if the hour is not saved, the workman being in effect paid for saving time.

Assume a case in detail: Under the old plan a piece of work requires ten hours for its production, and the wage paid is 30 cents per hour. Under the new plan a premium of 10 cents is offered the workman for each hour which he saves over the ten previously required. If the time be reduced successively to five hours, the results will be as follows :

TIME CONSUMED (Hours)	WAGES PER PIECE	PREMIUM	TOTAL COST OF WORK COL. 2 + COL. 3	WORKMAN'S EARN- INGS PER HOUR COL. 4 ÷ COL. 1
10	\$3.00	\$0.00	\$3.00	\$0.30
9	2.70	0.10	2.80	0.311
8	2.40	0.20	2.60	0.325
7	2.10	0.30	2.40	0.343
6	1.80	0.40	2.20	0.366
5	1.50	0.50	2.00	0.40

The amount of the premium, according to Mr. Halsey, should vary with the degree to which the extra output requires an increased exertion on the part of the worker. In 1895 he said :

The only system which will endure is the one which pays the least possible per piece of product. The purpose of these systems is not, primarily, to pay higher wages but to produce cheap work, the adjustment sought being one which shall give the workman an increased wage per day in return for the decreased cost per piece of product.<sup>1</sup>

The more recently advocated systems, to which the term "bonus" has usually been applied, seem to have as their essential aim the reaching of a specific output considerably higher than the previous average. Mr. F. W. Taylor described a system of remuneration before the American Society of Mechanical Engineers in 1895, which he called a "differential rate system of piecework," in which the central aim was to secure "the largest amount of work of a certain kind that can be done in a day." A rising rate per piece as the output increased toward the maximum was the stimulus offered the

<sup>1</sup> *Transactions*, Vol. XVI, p. 885.

worker in the scheme of payment.<sup>1</sup> Mr. Taylor insisted then and later that the central point in his system was the ascertainment through a determination of "unit times," that is, the shortest time in which each separate operation can be performed, of the maximum output which can be expected in a given time from good workmen working at the highest rate of speed which can be regularly maintained. His differential rate system of payment was intended as an inducement to the men to maintain that rate of output after it had been ascertained.<sup>2</sup>

In 1895, in reply to a criticism that the rise in the rate as the output approaches the maximum results in a higher labor cost per piece for the enlarged output than would be the case under an ordinary piece system, Mr. Taylor said :

On the contrary, with the differential rate the price will, in nine cases out of ten, be much lower than would be paid per piece either under an ordinary piecework plan or on day's work. An illustration of this fact can be seen by referring to paragraphs 78 to 83 of the paper, in which it will be found that a piece of work for which the workmen had received for years, under the ordinary piecework system, 50 cents per piece, was done under my system for 35 cents per piece, while in this case the workmen earned \$3.50 per day, when they had formerly made, under the 50 cent rate, only \$2.25 per day.<sup>3</sup> . . .

It is quite true that under the differential rate the workingmen earn higher wages than under other systems, but it is not that they get a higher price per piece, but because they work much harder, since they feel that they can let themselves out to the fullest extent without danger of going against their own interests.<sup>4</sup>

In 1901 Mr. H. L. Gantt presented to the same society a paper describing a "Bonus System of Rewarding Labor, being a System of Task Work with Instruction Cards and a Bonus." Under his plan of payment the specified task is made the worker's goal, and if he fails to reach it he receives no bonus.

<sup>1</sup> *Transactions*, Vol. XVI, pp. 856-903. (This paper is also reprinted in the *Economic Studies*, Vol. I, No. 2.)

<sup>2</sup> *Ibid.* Vol. XVI, pp. 875, 903; Vol. XXIV, pp. 1337-1338.

<sup>3</sup> In the case referred to, the original output was four to five a day; the maximum was set at ten, and when ten were produced in a day 35 cents per piece was paid; when less than ten were turned out in a day less per piece was paid.

<sup>4</sup> *Ibid.* Vol. XVI, pp. 887 *et seq.*

If the man follows his instructions and accomplishes all the work laid out for him as constituting his proper task for the day, he is paid a definite bonus in addition to the day rate which he always gets. If, however, at the end of the day, he has failed to accomplish all of the work laid out, he does not get his bonus but simply his day rate. . . . This system is, so far as the writer is aware, a new one, but it is based on the principles of Mr. Fred. W. Taylor's system of elementary rate fixing.<sup>1</sup>

Mr. Harrington Emerson describes a system of bonus payment in the *Engineering Magazine* for February, 1909, which is based on a system of "standard time determination." A "standard time" is established, which is considered the minimum time in which the given output can be reached by the use of the best methods. The worker who turns out the work in the "standard" time is said to have an "efficiency of 100 per cent." The workman receives a fixed sum and in addition receives as a bonus a percentage of his regular rate which increases more than proportionally with each per cent of efficiency attained above 67 per cent. At 80 per cent efficiency, for instance, the bonus is 3.27 per cent; at 90 per cent, 9.91 per cent; at 95 per cent, 14.53 per cent; and at 100 per cent efficiency it is 20 per cent. If the workman increases the output above the "standard," the bonus increases 1 per cent for each added percentage of efficiency above 100 per cent; at  $133\frac{1}{3}$  per cent efficiency, for example, the bonus would be  $53\frac{1}{3}$  per cent.

The average output before the introduction of the system is considered as 67 per cent efficiency. A worker who reaches 100 per cent efficiency must turn out 50 per cent more output in a given time than before. Assume, for example, that workmen with a wage rate of 40 cents an hour have been turning out on an average 6 units of a given article in six hours. The new "standard time" for 6 units is set at four hours. One and a half units of output is now said to be a "standard hour." If the worker turns out 6 units in six hours, as before, he has made but four standard hours in six hours of working time and his efficiency is but 67 per cent. Therefore, he receives simply his hourly rate of 40 cents and no bonus. If he turns out 6 units in five hours, he has made four standard hours in five hours of working time and his efficiency is 80 per cent. He will now

<sup>1</sup> *Transactions*, Vol. XXIII, pp. 341-372; Vol. XXIV, p. 1322; Vol. XXX, p. 1042.

receive his regular rate of 40 cents an hour for the five hours worked and a bonus of 0.327 per cent of that sum—a total of \$2.07, or 41.4 cents an hour. If he does the work in standard time and turns out the 6 units in four hours, he has made four standard hours in four hours of working time and receives his regular rate for the latter, \$1.60, plus 20 per cent of that as a bonus—a total of \$1.92, or 48 cents per hour. If he should be able to reduce the standard time to such an extent that he halves his previous time for the 6 units, he makes four standard hours in three working hours and his efficiency is  $133\frac{1}{3}$  per cent. He would then receive pay at his regular rate for the three hours, \$1.20, plus a bonus of  $53\frac{1}{3}$  per cent of that—a total of \$1.84 or  $61\frac{1}{3}$  cents an hour.

The labor cost to the employer, or the price per piece received by the worker, decreases, of course, as the output increases. At the old output, or 67 per cent efficiency, the rate per unit is 40 cents; at 80 per cent efficiency it is 34.5 cents; at 100 per cent, 32 cents; and at  $133\frac{1}{3}$  per cent,  $30\frac{2}{3}$  cents.

These plans for bonus payment are frankly intended to stimulate the worker to increased effort. Mr. Taylor, Mr. Gantt, Mr. Emerson, and Mr. Halsey all assume that most workers could considerably increase their outputs under present methods without over-exertion. Mr. Taylor said in 1903, in advocating his system of work and payment:

That there is a difference between the average and the first-class man is known to all employers, but that the first-class man can do in most cases from two to four times as much as is done on an average is known to but few, and is fully realized only by those who have made a thorough and scientific study of the possibilities of men. . . . It must be distinctly understood that in referring to the possibilities of a first-class man the writer does not mean what he can do when on a spurt or when he is overexerting himself, but what a good man can keep up for a long term of years without injury to his health and become happier and thrive under.<sup>1</sup>

It appears from other statements of this writer that the difference between what the first-class man can do and what the average man does lies largely, in his opinion, in differences in intensity of effort.<sup>2</sup> Mr. Taylor does, however, lay great stress upon the necessity of selecting the men who are to be asked to work under his plan.

<sup>1</sup> *Transactions*, Vol. XXIV, p. 1345.

<sup>2</sup> *Ibid.* Vol. XVI, pp. 864, 878; Vol. XXIV, p. 1350.

Mr. Gantt says that for a "fixed daily wage" the ordinary workman "will seldom do more than a fraction of the work he can do."<sup>1</sup> Mr. Emerson, in describing his own efficiency system, quotes Mr. Taylor's views with approval and proceeds on the same assumption that the worker, if he will, can greatly increase his output without injury to himself.<sup>2</sup> In his first paper, in 1891, Mr. Halsey, speaking of the daywork plan, said :

He [the workman] has consequently no inducement to exert himself and does not exert himself. . . . In certain classes of work an increase in production is accompanied with a proportionate increase of muscular exertion, and if the work is already laborious, a liberal premium will be required to produce results. In other classes of work increased production requires only increased attention to speeds and feeds, with an increase of manual dexterity and an avoidance of lost time. In such cases a more moderate premium will suffice.<sup>3</sup>

The same views are reaffirmed by Mr. Halsey in an article in the *American Machinist*, March, 1899.

Mr. Gantt and Mr. Emerson both emphasize particularly that the increased outputs are to come in large part from improvements in the methods followed by the workman in performing his tasks. The payment of bonuses is advocated not only as a means of calling out additional exertion on the part of the worker but as an inducement to the workman to follow instructions and to coöperate in the introduction of methods which increase output with only a fractional increase in exertion on his part. Their systems are rather "efficiency" systems than mere schemes of payment ; the bonus plans of payment are followed only as a part of the general scheme for increasing the efficiency of the working-force and thereby reducing the labor cost of production.<sup>4</sup>

DAVID A. McCABE

PRINCETON UNIVERSITY

<sup>1</sup> *Transactions*, Vol. XXIV, p. 267.

<sup>2</sup> *Engineering Magazine*, May, 1908.

<sup>3</sup> *Transactions*, Vol. XII, p. 760.

<sup>4</sup> *Ibid.* Vol. XXIII, p. 341; Vol. XXX, p. 1063; *Engineering Magazine*, May, 1908; February, 1909, *passim*.



## XVI

### PROTECTION OF PIECE RATE<sup>1</sup>

PIECE rate is the leading variety of those forms of industrial remuneration which are known collectively as "payment by results." Under each of these methods, in contrast to time wage, the performance of the workman is measured at frequent intervals, and he is paid accordingly. He thus works for himself as well as for the employer and has a direct incentive to "take up the slack" on his work, which last may often be accomplished through exercise of ingenuity as well as through greater exertion. Under time wage the advantage or gain from taking up slack accrues solely to the employer, and the only incentive that the workman has to create that gain (apart from any contingent participation in the profits or the fear of discharge) is the indirect or generalized incentive of a possible future advance of his rate of pay or promotion to a higher position. Day by day and job by job as he goes along, the typical workman remunerated by the hour is a hireling paid for his time, not a tradesman paid for his product, and any reward for well-doing is too remote and contingent to have full psychological effect. "Payment by results" dignifies labor by making the workman to a degree his own master, and on each job it has direct psychological effect with respect to zeal of performance. This is the theory of payment by results, but unfortunately the application of it has been such as to bring about much discontent and bitterness in the industrial world, and to cause widespread "limitation of output," or just the opposite of taking up slack.

Methods of wage payment by results fall into three main classes: the "bonus" method (including differential piece rate), the "premium" method (including some bonus schemes falsely so called), and ordinary piece rate. All these methods have several subvarieties. Piece rate is used in combination with guaranteed time wage in several different ways; there are a number of different forms of the

<sup>1</sup>From *American Economic Review*, Vol. IX (1919), pp. 455-467.

premium method and of the bonus method. Even if a few distinctive types alone were described, the technicalities involved would make this paper unduly long and complex. My purpose in writing it will therefore be best served by confining myself to a discussion of "straight" piece rate; that is, the payment of a fixed amount of money, irrespective of the time actually taken, for each unit of product counted, measured, or weighed.

The leading elements of piece rate are revealed when we consider what is done in "setting a rate" or "pricing a job" to be paid for by this method.

1. There is the more or less complete definition of the job. The job is, or should be, a certain operation on a certain "part" or kind of material, performed by hand or by machine, and there may be certain appliances to facilitate the work, such as jigs or other tools. Of course it makes a great difference what machines, run at what speed, working on what quality of material, and in what quantity. The workman cannot get his hand in as well on short jobs frequently changed as on long jobs changed infrequently. Piece rate is not necessarily confined to "repetition work," but, as is well known, it fits best that class of manufacturing.

2. There is the determination of the approximate time it will take to do the job; that is, usually, not the time for the individual piece but for the whole number of pieces (or yards or pounds) to be done together as one batch or lot. For example, five hours is estimated to be the time required to do, working briskly, a lot of 500 pieces.

3. There is taken into consideration the grade of labor proper for the job and the hourly wage rate of that grade; for example, for this job a grade of labor that calls for weekly earnings of \$22 in a fifty-five-hour week and therefore a time rating or base wage of 40 cents an hour. (If the working hours per week were forty-four, then for this \$22-a-week grade of labor the time rating would be 50 cents an hour.) This base wage multiplied by the estimated time required or expected to be taken yields a rate or price for the job which is the equivalent of the standard of pay thus far assumed to be proper for the job. (Thus five times 40 cents equals \$2.) This last is called, in shop terminology, "time." If the workman should do just two of these jobs in a ten-hour day and be paid \$4, he would be said to be making his "time."

4. And, finally, it is taken into consideration (wherever piece rates are properly set) that the workman must be rewarded for the desired and expected "piece-rate intensity of effort," or voluntary zeal in performance, which is the employer's object in going to the trouble of putting the job on piece rate and incurring continuing expense in counting and recording for the pay roll after the rate is set. If the workman is to have opportunity to make only "time" on the job, he will not exert himself to develop speed or ingenuity any more than if he were on ordinary day wage. He must have the incentive of an opportunity to make more than his time; there must be a bonus factor in the piece rate. Accordingly the piece-rate equivalent of the base time wage (\$2 in this case) is increased by, say, 25 per cent to enable the workman to make *at the assumed proper speed of working* what is called "time and a quarter"—\$2.50 for the job, or 20 cents an hour, or \$5 in a ten-hour day. This final revision of the job price sets a standard rate of remuneration for the job *as put on piece rate*, the unit of pay being adjusted to the unit of effort, which is what the workman sells in the last analysis rather than the physical product. If the employer, as sometimes happens, omits the bonus factor from the revised piece rate and depends for results upon "driving," he is attempting to get "piece-rate intensity of effort" without paying for it.

The rest of the process of rate-setting is merely arithmetic—dividing the revised job price by the number of pieces comprising the job or lot (500 in this case), which yields five tenths of a cent as the individual piece rate, or piece price, for doing this work. Thereafter, whatever the varying number of pieces the workman may do in any pay-roll period, the ascertained count is multiplied by five tenths of a cent and he finds the money in his pay envelope to correspond. It is obvious that as long as the rate stands unchanged the advantage from any "time saved" in doing the work, as compared with the estimated time required by which the rate was set, accrues solely to the workman. That is, the employer gains nothing on direct labor cost if the workman takes up more slack than was expected. The employer's gain in that event consists in a lower total cost by reason of the fixed charges or overhead being spread over a larger product, together with the further indirect advantages from prompt delivery to customers and other like considerations.

To sum up, the complicated structure of a piece rate properly set includes (1) the definition of the job (not merely the name of the job but a statement of the controlling conditions under which the work is done); (2) the time-required basis; (3) the base time wage, or hourly rating; (4) the bonus, or standard reward for effort, which the workman is expected to earn if the actual time taken coincides with the time expected to be taken. The labor value of any time saved by a greater speed of working is to go to the workman as additional bonus.

The great source of trouble in the prevailing practice of piece rate is that the time-required basis of the rate is usually, in fact almost always on new work, estimated far too liberally. There are a variety of reasons for this: for one thing, the desire to enable men new to the work to earn good pay from the start. (A commendable object that should be achieved by another method, by paying a learner's retaining fee.) But chief of all is the lack of proper definition of the job before the time estimate is made. Indeed, such is the usual absence of any attempt at adequate standardization of the job—predetermination of proper speed and feed of the machine, quality of the material, appliances to be used, motions of the workman—that the conditions under which the work is to be performed are quite in the air, and it is a euphemism to say that the necessary time to be taken is "estimated." It is merely guessed at, and even the guessing is not done with respect to anything that is definite. Accordingly, as soon as the workman becomes thoroughly habituated to the work and the job itself is "smoothed out," it is commonly found that it can be done easily in much less time than that embodied in the rate. If nothing holds the workman back from doing what he can do, he goes ahead taking up slack until presently there is such a saving of time that his earnings mount to "time and a third," "time and a half," "double time," or even more.

It is to be noted that such is the cumulative effect of doing work in the time saved and getting pay for it that the workman's earnings for any pay period increase in accelerated ratio with the time saved. To earn "time and a half," even under piece rate with no bonus factor, it is not necessary for the workman to reduce his time of performance by 50 per cent of the time embodied in the rate, but by only  $33\frac{1}{3}$  per cent of that time. If he should cut the time in

half (not at all an uncommon accomplishment, even where the time is supposed to have been set "close"), his earnings when he is working consistently at that speed would become "double time." He would then repeat the job we figured above four times instead of twice in a ten-hour day, or would turn out 2000 pieces and be paid for a day's work, at four tenths of a cent per piece, \$8 (or double \$4, which was "time"). But in the example before us the workman is entitled to five tenths of a cent per piece, a rate that contains a 25 per cent bonus factor. So, then, if he turns out 2000 pieces a day instead of 1000 (through a saving of time of 50 per cent) he will earn \$10 a day or "double time and a half," instead of the "time and a quarter" (\$5) that he was supposed to be able to earn. It is evident, therefore, that a bonus factor as high as 25 per cent cannot be embodied in a piece rate with prudence, unless the time-required basis be predetermined very accurately; and, in fact, so high a bonus factor would rarely be used where usual rate-fixing methods are employed. Also it is clear that with or without a liberal bonus factor the root of the difficulty with piece rate is miscalculation of the time-required basis of the rate. Errors in favor of the workman in estimating the time required are obviously costly to the employer and must often result in extravagant earnings. And when such extravagant, "out-of-line" earnings do occur, the next thing that happens, of course, is that the piece rate is cut to reduce the workman's wages to what is reasonable. The opposite also frequently occurs by reason of the time required being estimated "short," entailing that under the rate established the workman cannot make even his "time." Piece rate is, in fact, a nicely balanced, unstable method of paying wages, requiring fine calculation and adjustment to give satisfactory results; and under the prevailing hasty, inexact practice the fine adjustment called for is made after the rate is set and "tried out" instead of previously as it should be. There are, to be sure, a considerable number of industries with well-established piece-rate scales changed infrequently. But generally speaking there is a vast amount of tinkering to correct the error of badly set rates. Raising the rates to make them right does little harm; it is the lowering or "cutting" of the rates which works mischief—a mischief that can hardly be exaggerated, for it means the utter demoralization of the workman.

Before we proceed to further discussion of the effect of rate-cutting upon the workman, let us first examine into the question of its justification. It is often alleged that an error of liberality in setting a piece rate is not costly to the employer, that he "doesn't lose anything by it," but even gains. Now of course if the employer had occasion to compare merely the performance and earnings of his own workmen in any class of piecework relatively to each other, it is true that the speediest and highest-paid man of the group would be the most profitable man. The labor cost per unit of his product is no more than that of the slowest, and the overhead expense per unit is much less. But the employer usually is compelled by competition to compare his pay roll as a whole with those of his rivals. He cannot keep on paying extravagant wages and continue in business. If his rival has guessed better than he has in setting his piece rates, he must reduce his own so that the earnings of his men collectively will be in line with those of the rival. Moreover, the employer has occasion to make comparisons between different grades of piece-rate workers, and between workmen and foremen, within his own establishment. If some of his workmen are earning what is right by piece rates properly set and others are earning extravagant wages by piece rates that are improperly set, the effect will be jealousy and bickering. The earnings must be harmonized to keep the peace. Also it is a scandal, subversive of discipline and calling for remedy, when the extravagant piece-rate earnings of workmen cause them to have more money in their pay envelopes than the foremen have in theirs. It therefore comes about that as long as errors are made in estimating the time basis of piece rates, piece rates will have to be cut. This statement is central to the main argument of this paper. Piece rates by and large in industry will have to be cut: there are reasons—ample, controlling, permanent reasons. It is of no use railing at employers and their rate-setters for their alleged "stupidity" in cutting rates. It is of no use preaching up the Golden Rule to industrial managers as a remedy for rate-cutting. As long as rates are set as they usually are they will have to be cut.

But, say the proponents of "scientific management," piece rates need not be "set as they usually are"; they may be and should be set by "time study," and then the rates can stand. Apart chiefly from overlooking the effects of competition in a changing world, this is a

logical position. The idea is that by means of thorough standardization of the job, which always precedes a proper time study, and by the time study itself, the rate-setter ascertains in advance the amount of slack that can be taken up in doing the work and so discovers the exact time required. With that information he then sets a rate under which it is impossible for the workman to make extravagant, runaway earnings. Such is the confidence of scientific-management men in the accuracy of time study (together with overlooking or minimizing the effect of changes in the competitive situation), that wherever piece rates are set by that method a definite promise is made in writing to the workmen on each job that the rate will never be cut, unless the job changes its character so that it becomes a new job.

The present writer is a believer in time study and has had direct experience with it. He is of the opinion that it holds much promise for the future betterment of industrial relations. Nevertheless, it has its limitations and does not invalidate the position taken above, that in industry in general, in the future as in the past, piece rates will have to be cut. For one thing the expense of time study, properly performed, places bounds to its extension in the field of industry. Also the accuracy of its methods and the permanency of its results, under actual working conditions in industry, are not as great as the theory of the device calls for. Under time study, errors are made in setting rates, sometimes serious errors, and it is therefore a dangerous practice to make in good faith definite written promises that the rate will "never" be cut "unless the nature of the job changes." And this last qualifying clause in the agreement presents a large opportunity for evasion on the part of the unscrupulous employer or his overzealous rate-setter. Anyone having the slightest acquaintance with the details of workshops knows that no end of "nibbling" of rates can be introduced through the expression "unless the nature of the job changes." I am aware that the danger here is guarded against in genuine scientific-management shops by certain methods (the use of the so-called instruction cards), but these methods may fall into disuse through the carelessness of subordinates, and the honest purpose of the proprietor may not endure. In any shop after a time there may come a king who "knew not Joseph." In short, such is the effect of multitudinous details, technical and competitive change, carelessness, excessive zeal, and human greed that

time-study methods cannot be depended upon to abolish rate-cutting, even where the expense of those methods does not preclude their use. Rate-cutting emerges from the nature of things industrial; neither old nor new devices of rate-setting can secure the inviolate maintenance of piece rates. The protection of piece rate (removal of the chief evil connected with piece rate) must therefore come about not through vain attempts to abolish rate-cutting but through the adoption of appropriate methods of safeguarding the interests of labor when rates are cut.

The effect of rate-cutting, as now practiced without safeguards, upon the individual workman directly affected and upon the whole body of workmen throughout industry is lamentable. Whether the employer does it arbitrarily and aboveboard, or whether he does it underhandedly by means of tricks and evasions, either way its primary effect is virtually to fine the workman for ingenious and speedy work (as it inevitably appears to him) and to bring it about that he and his fellows do more work (deliver more units of effort) for less pay. By reason of rate-cutting, as Sidney Webb has said, a "subtle degradation" goes on with respect to any standard rate, linking pay with effort, that the workmen seek to maintain. The secondary effect with respect to workmen is, of course, that they seek to safeguard their interests against this attack; and they do so by means of a whole system of reprisals. The characteristic form of these reprisals is deliberate limitation of output—purposeful "soldiering" in its various aspects. Also there is opposition to putting time work on piece rate where it should be; and, furthermore, especially in England, there is opposition to proper analysis or "routing" of work which would lend itself to the introduction of piece rate. There are, of course, as already stated, some establishments where the evil of rate-cutting has been at a minimum and where in consequence little limitation of output obtains. But the general situation in industry, both with and without labor organization, is one of widely ramifying open or covert war against output, resulting in huge amounts of wealth-not-created. The evil of limitation of output is complicated with the lay-off evil (which has its own appropriate remedy); nevertheless its chief continuing cause is unsafeguarded rate-cutting. The more intelligent workmen know, of course, that slow-work practices are no part of a constructive program of advance



for labor; they do these things merely to meet the exigencies of the existing situation, as a counter-attack against an attack made on themselves.

And the great waste of industrial power and loss of wealth to society, including the workers, is not the only serious aspect of this warfare originating chiefly in the cutting of piece rates. From the great mass of chicaneries and injustice, about evenly divided between the two sides, emerges a lamentable and unnecessary degradation of the human spirit. It hurts all honorable workingmen in their self-respect to practice limitation of output. Moreover, the bitterness that prevails in workshops between the workmen with the spirit of solidarity and the crass individualists, or so-called, "piece-rate hogs," is most regrettable. As one experienced and conservative labor spokesman, Mr. Portenar, has said: "A man shows his naked soul when he works at piece rate." The "chasers" and other stool pigeons that many employers use in their efforts to circumvent the reprisals of labor increase the sum of hatred in the world in a way that is not necessary to get the world's work, rightly ordered, done. A workman has a right to a decent life in industry, and society pays if he fails to get it.

And now to come to the conclusion of the whole matter. It is absurd for society, itself so large a sufferer, to let industry go on muddling in the slough of this piece-rate difficulty unaided. With hundreds of millions, possibly billions, of lost wealth at stake, inconvenienced by strikes and other contingent evils, it is absurd for people at large to allow the parties in direct interest to "fight it out" in a war that has no ending. Society has pursued the hands-off policy in the past doubtless because it was thought that, such was the mass of details involved, the state would be incompetent to intervene to advantage. Also the serious difficulty and danger of governmental interference in any economic matter involving supply and demand has been appreciated. But it is clear that the state is competent to intervene in this matter of piece rate to advantage, avoiding the details and the ultimate economic determinations, by laying down fundamental rules of method and procedure. That is what the general body of commercial law does, and all it does. Why should industry in the aspect before us be allowed to continue to be a bear garden? Organized society, the state, should add to its concepts

of law and conceive every industry to be "affected with a public interest," and enact appropriate regulations accordingly. Piece rate should be protected by law based on a general policy, as indicated above, of prescribing forms of procedure. No direct interference with matters properly determined by supply and demand (such as the base time wage) ought to be undertaken; simply the substitution of definition and publicity for indefiniteness and secrecy.

Let it be enacted into law, and the means of enforcement provided, that in every shop where piece rates are used:

1. A list of rates shall be published showing not only the rates themselves but the "elements" from which they are derived—the definition of the job, the time-required basis, the base time wage, and the amount of the bonus factor.
2. A statistical accounting shall be kept of the earnings (or performance record) of the individual workmen under each rate, and audited at stated intervals.
3. A statement of the period during which each rate shall stand without revision downward shall be made a part of each piece-rate agreement and published.
4. The rules of revision, or the limit to which revision downward may take place, shall be stated in sufficiently explicit terms and published.

For example, under the last head, if at the stated time of revision it shall be found that the average earnings of a group of workers on a certain piece rate have been "time and two thirds" (or some other predetermined amount) the rate may be cut, but only to a point that will yield the average worker "time and one third" (or some other predetermined amount) as shown by the average of the performance records. That is, the new, reduced rate shall be so set on the basis of the average speed attained by the group that a certain standard of pay is safeguarded. Contrariwise, at the stated time of revision (or between times) any rate that is found to yield average earnings below the standard of pay aimed at shall be revised upward.

A somewhat elaborate code will have to be developed to protect the interests of the employers as well as those of the workmen in the application of the foregoing principles. The principles or leading rules themselves will require amplification. For one thing, there is the problem of what to do with small groups or single workers where

the law of averages is not available. In such cases there should be a lump-sum payment in compensation for loss of earnings when a piece rate which yields extravagant wages is reduced. The method employed might be capitalization of the excess earnings considered as an annuity on the basis of some predetermined rate of interest. Then, again, there is the question of what procedure should be followed when, as often happens, a high-grade piece-rate workman is temporarily placed on a low-grade piece-rate job. The rules for such special assignments should be predetermined and published. A special higher rate for the job cannot (without creating jealousy) be offered in such cases for the benefit of the particular workman; his customary earnings must therefore be safeguarded by calculating how much he ought to earn with due diligence by the established rate and then adding to this a fixed time-wage retainer. To illustrate: his customary piecework earnings per hour are 50 cents; what he can be reasonably expected to earn per hour at the temporary piecework is 30 cents; the guaranteed hourly retainer, which he would supplement by his own efforts, would be 20 cents. Where such a retainer is not paid in these cases, usually the workers "soldier" to a degree (as I have myself seen) which is the despair of foremen. Workers always resent injustice in wage matters and commonly endeavor "to get even," although with honorable employers of course no injustice is intended. The rules of order and publicity suggested above would be opposed by many employers, and yet undoubtedly they would be to the advantage of employers as well as wage-earners. It is to the interest of everybody that ways and means be found, as they can be, covering all circumstances to encourage piece-rate workers to do their best. These ways and means will not be found by the general mass of managers of industry working without assistance.

The chief practical difficulties in a general plan for protection of piece rate will be those which will arise from the necessity of establishing proper uniformities and proper diversities in piece-rate scales as between one shop and another in the same district and as between different districts for a whole national industry. Here, again, I think the state should require published rules of procedure, but these rules would have to be arrived at through organized employers and organized employees freely using the methods of collective agreement. As for that matter, the whole body of rules suggested above for the

protection of piece rate, primarily in the workers' interest, will have to rest ultimately (although the state takes the initiative) upon the basis of unionism and the practice of collective bargaining. Not only must all the cards—not some of them, but all of them—be placed on the table to protect piece rate in the workers' interest, but also the workers must have adequate control as to what those cards shall be. The representatives of the organized workers should inspect the methods of determining the time required on piece-rate jobs; they should pass upon the bonus factor; they should audit the record of earnings; and above all they should have a say as to the base time wage embodied in each piece rate. The labor organization and the mechanism of collective bargaining and representation sufficient to perform these tasks (not merely to satisfy labor but because logic and right reason demand it) will have to rest on a broader basis than mere individual workshop boards or committees. To solve the piece-rate problem, and all the other problems of industrial life, there must be indeed unionism broadly established and recognized and supported by society. Society must realize that the manifold interests of working men and working women in every shop cannot be adequately protected unless they appear before their employers by counsel. The outsider, an official of the intershop union, is not strictly an analogue of legal counsel (he brings his own interests into the case): nevertheless that term is useful as indicating the nature of the function of expert assistance which he renders his clients in any shop. The workingman, when engaged in buying his wage by the exchange of his mental and physical effort, often needs to be coached as to his demands, and he has therefore the occasion and the right to employ counsel to examine into all the conditions of the deal and through him to state what terms he is willing to accept.

And not only should the workingman have the right to do business with his employer by counsel (through the official of his union) but he should actually do so. Therefore, in the absence of a union (as is often the case, especially with women workers and the sweated trades generally), the state itself should appoint such counsel, similarly to what is often done in criminal trials. Is it not absurd that in the multitudinous industrial cases, so vastly important in the aggregate, hundreds of thousands of workers who most of all need expert defense are left without any? The hands-

off policy, the "let them fight it out" policy in these matters must be absolutely abandoned, not merely in the interest of the workers but in the interest of the employers and of all of us. Of recent days events have brought a condition under which industry will profit greatly by a speedy introduction of the "common rule" into all matters affecting remuneration of labor and other conditions of employment. Employers, legislators, courts, all of us, should get some new concepts with respect to labor organization and labor standards and act upon them without delay. Order should be introduced into a realm where hitherto there has been anarchy.

These last matters are to a degree collateral to the proposals made above for compulsory rules of procedure and publicity with respect to piece rate. Further discussion of them is therefore out of place here. What I wish to emphasize now is that, however necessary collective bargaining may be as the basis of adequate protection of piece rate in the worker's interest, published rules of procedure required by law as set forth above are also necessary to the protection of piece rate in society's interest. So long as the methods of piece rate are left in an undefined, chaotic condition there is grave danger that collective bargaining operating under such conditions may seek to solve the tangled problem in reactionary and harmful ways. It is abundantly clear from evidence published of late that in the engineering trades in Great Britain, for example, organized labor has protected piece rate not by intelligent regulation but by stubborn opposition to its introduction and by outrageous practices of limitation of output. The whole situation was apparently too confused to admit of intelligent regulation; there was no foundation or preparation for the proper exercise of the forms of collective bargaining. What is needed everywhere first of all, therefore, to prevent such things from happening is the letting in of the light, the opening up of the subject for proper handling, by the laws suggested, which will compel the piece-rate accounting, the publication of the scales, the definition of the jobs, and in short the whole analysis of the piece-rate problem into its "elements." Then upon such a basis can come the follow-up of collective bargaining properly applied, and, when necessary, public arbitration intelligently applied.

CHARLES W. MIXTER

## XVII

### NONFINANCIAL INCENTIVES<sup>1</sup>

THE basis of all "nonfinancial incentives" is interest in work. Interest in work implies a desire to produce actuated by internal motives rather than external discipline.

Production means creation, and the industrial creative function in man is a mental process and lies in his intelligent adaptation of means to ends. It is useless, therefore, to look for real creative work unless the workman has a chance to think and to plan; any other working environment either fails to attract or actually repels the workman, and as a consequence offers no incentive to increased effort.

Work which does not call for thoughtful reflection, and which uses only muscular effort, tends to draw man down to the level of the brute and makes for industrial irresponsibility and consequent social disorganization. The unthinking man cannot be a responsible man.

It is the self-conscious faculty of man which distinguishes him from the animal and makes him above all a creative center through which the universal life-giving power can deal with a particular situation in time and space.

To use a homely illustration with which everyone is familiar, the traffic at each crowded street crossing cannot be regulated from the City Hall; it requires an individual (the traffic policeman) in the congested spot to deal with each particular situation as it arises, and upon his powers of observation and selection depends the orderly flow of traffic.

It is only through the individual life that the universal life can act, and therefore the universal is compelled to evolve many individual lives if organization and order are to replace the unorganized state represented by the purely generic operation of natural law.

The problem of social organization is, then, how to organize

<sup>1</sup>From Publications of the American Society of Mechanical Engineers, No. 1673 (1918).

society upon the basis of respect for the individual. This is also the industrial problem as well, for industry in the broadest sense is society in its highest form of activity, because it is essentially constructive and therefore creative activity.

It was an inevitable corollary to the universal plan of creation that the individual life came into being not to create material substance, as that had to be before individual life could gain consciousness. The function of the individual life, however, is to create by a thought process conditions especially selected to produce results which nature unaided would fail to produce.

This is what the horticulturist does. His power lies in his knowledge of natural law, and his creations are made possible because he conforms to the law. The uncultivated orchard reverts to its original wild state when no longer attended by man, but increases in productiveness by continued thoughtful application of man's power of selection and adaptation.

It is by a similar process of conscious selection that such devices as the steamboat, steam engine, electric generator, and the telephone came into existence. They did not come into being and never would have been created by the generic operation of nature's laws.

To illustrate further: The desire of the savage to cross a body of water too wide for him to swim caused him to observe the floating of things which floated naturally. As a result of this observation he built a raft; and finally, by further observation, he discovered the principle that anything which, bulk for bulk, was lighter than the water it displaced would float, and although he perhaps unconsciously applied this principle, it is true that from its application he evolved the canoe.

It is by a continuation of the application of this same law that, almost within our own memory, it has been made possible for the vessels of the world to be built of iron, something which the old shipbuilders thought impossible. We see then that it is the application of the personal factor that now makes iron float by the use of the very same law that makes it sink.

Upon a higher plane the modern electric generator was evolved by observing that a wire passed at right angles through a magnetic field would induce an electric current to flow through it in a certain direction.

It was only by creating, through the application of the personal factor, conditions by which this law could be expanded that electricity was generated commercially. The electric generator is nothing more than a large number of such wires, insulated one from another, passing in and out of a number of magnetic fields, plus a device for collecting and conducting away the current generated. The important point to remember is that there never would have been an electric generator without the introduction of the individual personalities who literally created it.

In this connection it is well to observe that all of our creations, if they are to be successful, depend upon the strict observance of the laws of nature. When we clearly see man's place in the universal life movement, we can understand why it was that in the long process of evolution it was inevitable that a being capable of measuring by reflection be evolved. The very word "man" is derived from an Aryan root meaning "to measure."

All this may seem at first sight far removed from the problem of "nonfinancial incentives," but it seems to me it is necessary before proceeding further to gain some conception of the reason for man's existence. The concrete illustrations of the operations of nonfinancial incentives will then have greater meaning.

Man, through the exercise of his intellectual faculties so laboriously acquired through ages of slow evolution, literally reflects the universal creative process upon the plane of the particular. There can be no organization of material substance except through an individual who can observe the laws inherent in the materials themselves. Then, by a process of reflection, these materials can be organized into forms which they could not take unaided by the individual will or a power external to themselves.

To state the matter more concretely: man, we know, cannot bring matter into existence, neither can he create the force which resides in the physical elements he uses in the day's work; what he does is to observe nature's forces in action and then, having learned the laws, that is, the reasons for their action in any particular direction, he seeks for means to make them express themselves more fully.

This, of course, necessitates the creation of conditions which do not occur spontaneously in nature. We have here the beginning



of what we call the artificial, and it is significant that the highest type of this form of creation, upon a higher plane than the natural, is termed art.

This creation of artificial conditions which, taken all together, we call civilization is of course the product of man's organizing power. While self-consciousness, the power of realizing the self as apart from the rest of the universe, has been a human faculty for untold ages before the present highly organized state of society had been attained, it is nevertheless true that now, for the first time in the history of the white race, we are confronted with the problem of correcting the repressive or selfish character of civilization so that it will serve the mass of humanity. If we fail to accomplish this it will be destroyed by the same creative power which brought it into existence.

We must learn how to change the industrial environment from one which repels mankind to one which attracts. In other words, the incentive to work must be inherent in the nature of the work itself.

Now what are the conditions which we must meet in the industrial world to make work attractive? We have ample evidence that increasing financial returns have failed to stimulate productivity, and, on the other hand, the constant demand for shorter hours and the increasing labor turnover are proof that work in most of our industries not only does not attract but actually repels the workman. We must therefore look into the working conditions themselves for the answer. This is the only scientific method of procedure.

I should like to quote from a letter received from a very intelligent labor leader recently,<sup>1</sup> to show how the mass of employees look at the problem and how urgent is the need for its immediate solution if we are not to have a greatly reduced production of the necessities of life brought about by the concerted action of the workers:

Is it not true that the industrial evolution which has brought the trusts into existence has been the means of eliminating the "human touch" in industry? During the days of small industrial plants the employer and the employee, of course, were really fellow workmen. At the present time, however, the employee has perhaps never seen any of the stockholders of the industrial plant where he is employed.

<sup>1</sup> John P. Burke, International President, Pulp Sulphite and Paper Mill Workers' Union.

You say that men can be productive only when they take an interest in their work, and they will not take this interest unless those intrusted with the direction of their efforts realize that they must teach them constantly how to exercise their creative powers.

While I agree with everything you say relative to creative work, and have thought along these lines considerably myself, still, is it possible in industries as they are constituted at present to enable the average workingman to do creative work? Isn't it true that industry is becoming so specialized that the workman is no longer a creator? I realize that while it may still be possible for the workman doing certain jobs in the mill to do creative work, to a certain extent, still isn't the tendency of modern industry more and more toward making the workman simply an 'appendage of the machine'?

In the paper you sent me you described how you designed a plan for the men operating the hydraulic press to take an interest in their work. This certainly is a practical illustration of what can be done and perhaps could be cited as a refutation of what I have just written above. I realize that there may be certain jobs in the mill where the creative powers can still be allowed to develop and where the workman may be given a chance to express his individuality, but the point I am trying to bring out is that the tendency of *modern industry* is away from creative efforts and gives the workman less and less opportunity for individual development. When I worked in the factories, which I did from the age of twelve to twenty-five, one of the things I found the most dissatisfaction with was the deadening sameness of the work. I never remember a time, when working in the factories, that I became so interested in my work that I didn't long for quitting time to come. After leaving factory work I got a job with a building contractor. As I became more proficient as a carpenter, I have time and again been put doing certain work that was more or less creative, in which I have become so interested that I paid no attention to quitting time and have worked for two or three hours after the time when I might have quit work. There is joy in creative work. But, in my opinion, no matter what schemes we may devise, modern industry is going to tend more and more to make simply automatons of men.

I may say, however, that I could find very little to criticize in either of your articles. You have demonstrated, from practical experiments, things that I have often theorized about. The conflict in industry during the next few years, in my opinion, will be between the democratic and autocratic ideas. The autocratic idea, I think, is best exemplified by the German military machine.

I was able to convince the writer of the letter from which I have just quoted that creative work could be done to a great extent in

modern industry, and, further, that this could be accomplished without any radical changes in equipment, greatly to the advantage of both employer and employee.

### INDIVIDUAL PROGRESS RECORDS

To do this, individual progress records are necessary, so that the workman can know from day to day how he is improving in the mastery of the process.

The first example, illustrated by Fig. 1, is from that branch of the wood-pulp industry known as the sulphite process and shows a cooking chart which was designed to give the cook information about the reactions in the digesters in which the wood chips are cooked in a 6 per cent solution of sulphurous acid partly combined with a lime base.

The digesters have a conical top and bottom and are usually 50 feet high by 15 feet in diameter. After the acid and chips are put into the digester and the cover is put on, steam is turned in at the bottom and the pressure brought up to 75 pounds per square inch above atmospheric pressure.

As this does not heat the digester sufficiently to produce disintegration of the wood, it is necessary to relieve gas through a relief valve on the cover. Because of the removal of this gas, which is afterward reclaimed, more steam can come in at the bottom, and thus the temperatures are advanced. The skill in cooking consists in the proper control of the relief valve.

Before the introduction of these cooking charts, illustrated by Fig. 1, all this was left to the unaided judgment of the cook, with usually nothing to help him but a small hand thermometer and a pressure gage. Of course great variation in the pulp was the result. The cooking charts, plotted by the cooks themselves, however, helped greatly, as they enabled the quick visualization of the work. On these charts temperatures are converted to pressures for the reason that the pressure in the digester comes from two sources, one the natural pressure due to steam and the other due to the sulphurous-acid gas. The pressure, for instance, which would correspond to a temperature of 212 degrees would be 0, or atmospheric, yet from the chart you will see that the gage pressure actually

showed 75 pounds. The difference between 0 and 75, therefore, is caused by the presence of sulphurous-acid gas. As the cooking progresses the gas is naturally used up: first, by being relieved for the purpose of making room for more steam; second, by the natural

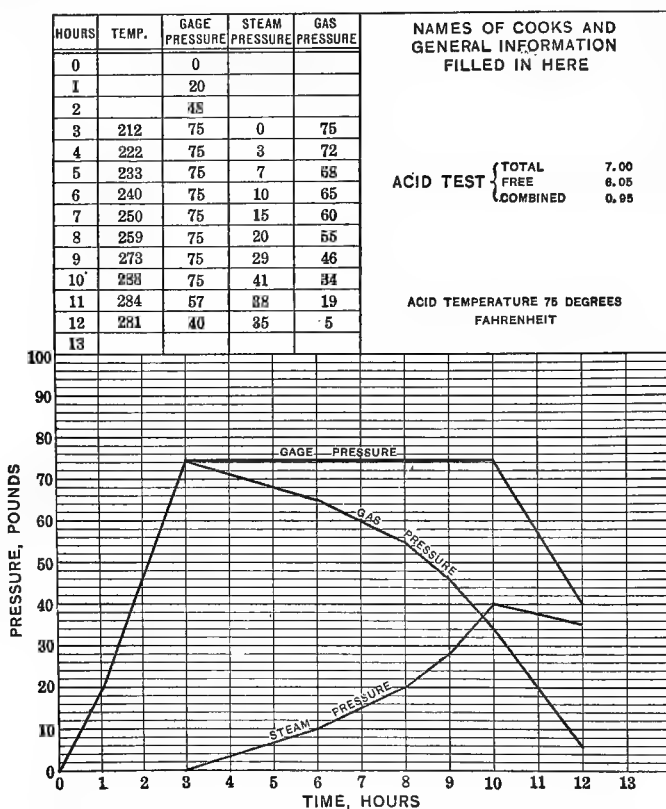


FIG. 1. REACTION IN DIGESTERS IN WHICH WOOD CHIPS ARE COOKED

combination of the acid with the organic compounds liberated during the cooking process.

At the end of the cooking process the gage and steam pressures will naturally come very close together, as the greater part of the  $\text{SO}_2$  gas has been used. The gas-pressure curve is obtained by subtracting the steam pressure from the gage pressure. It is really a

resultant of the other two. If it drops too rapidly the cook knows he is relieving his digester too hard and checks the opening of the relief valve. If it does not drop rapidly enough he knows he must open the valve wider in order to increase the relief. Of course the figures are taken from recording instruments which are checked daily to insure accuracy. Naturally an ideal cooking chart was soon formed, being the joint work of the cooks handling the digesters and of the chemical-research department.

Immediately after the introduction of these charts a very marked increase in the uniformity of the pulp was noticed, and the cooks, while at first opposed to the new method of "cooking with a lead pencil," as they called it, soon learned to like their work much better, for the reason that they now had some way of visualizing the work in its entirety. In addition to more uniform quality of the pulp, the yield from a cord of wood increased something over 5 per cent.

### CONTINUOUS PROGRESS RECORD

We soon found that it was necessary to give some sort of continuous progress record if we were to keep up the interest in the work, because no man could carry in his mind anything but a general impression of his progress from day to day. Several good records for one day are only like so many good golf drives. They are a source of satisfaction at the time, but just as the score in golf denotes our real mastery of the game, so does the progress record measure the man's increasing mastery of his work, and we feel that it is one of the moral obligations of the management to keep such records for the individual workman. Without these records men will not think of improvements in the process, and they cannot be blamed for becoming indifferent. How long, for instance, would a superintendent or manager retain his interest in the economical operation of his plant if his cost sheets were withheld? We, as executives, must have quantity, quality, and economy records, otherwise our interest soon lags. Why, then, should we expect the workman to be interested when he is not furnished with a record which at least reflects one of these elements?

Such records can be grouped under three main headings: quantity records, quality records, and economy, or cost, records. Quality

records, which occupy the middle position, are, perhaps, of the greatest importance, for they bring the individual's intelligence to bear upon the problem and as a consequence, by removing the obstacles to uniformity of quality, remove at the same time the obstructions to increased output. The creative power of the human mind is, however, not content simply to produce the best quality under existing conditions of plant operation. The desire to create new conditions for the more highly specialized working out of the natural laws of the process demands expression, and this expression at once takes the form of suggestions for improvements in mechanical devices.

This desire contains within it the germ of economic thought, which will unfold and express itself eventually in a request for cost records, and the organization that neglects its opportunity to satisfy this desire is overlooking one of the great avenues leading toward intelligent productive effort.

Because of the interrelation of quality, quantity, and economy records, any complete record of individual progress must, of course, take them all into account. However, as this is not always practical, we have at least one of three ways of measuring progress always open to us.

We keep a continuous progress record of the work which is mainly one of quality. By quality I do not necessarily refer to the quality of the material produced, as most of our records refer to the quality of the work performed—in other words, the nearness to which the workman approaches the ideal standards which he has helped to form. The democratic coöperative forming of these standards by the joint work of the trained technician and the practical workman is absolutely essential, otherwise continuous progress will not be made. The whole plan must be really educational in nature, and to be so the records must record the natural laws of the process and the individual's degree of control of forces in the material elements that he is using. The more factors that can be recorded, the greater the interest in the work. The reason for this is obvious.

There are nine men cooking, the names posted in the order of seniority, with the highest monthly record on top. There are three foremen at the top of the record. Each of these foremen has three cooks under him, and their standing is made up by taking the average records of the men under them. In this way we are enabled to get

not only the individual records of the men but the group, or team-work, records as well. For the convenience of the department head in charge a record is kept which shows the relative standing of the large, medium, and small digesters. This is irrespective of the men who are working on them.

The total progress-record figures are made up of the temperature, color, time, and blowing records. The relative values that these have in the total record are shown at the top of each column, the total adding up to 100. There is but a small variation in the monthly-average column of each worker, and this is characteristic of all our progress records. It shows how great is the incentive when individual effort is intelligently recorded.

The temperature record is obtained by taking half-hourly readings from the recording-thermometer chart, upon which a standard-temperature curve has been plotted, calling each reading which happens to fall on the standard line 100, and a reading 20 degrees either side of the standard line 0. This means that for each degree off of the standard, 5 points are deducted from the progress record.

The color record indicates how near the men come to blowing the digester when the color of the liquor shows the proper amount of lignin in the solution. The sample, drawn from the side of the digester, is compared with the standard color. To get a mathematical value for this factor a range of colors from a very dark to a very light was obtained, the particular shade which was taken as standard marked 100 and one shade either side 10 points less than 100.

The time record is obtained by calling a certain time of cooking 100 and taking off on each digester cooked one point for each minute above or below this standard.

The blowing record is obtained by calling 30 pounds pressure 100 (most of the cooking being done at a pressure of 75 pounds per square inch) and 60 pounds 0, the idea being to get the pressure as low as possible before blowing the digester.

It will be noted that the temperature value is higher than any of the others. This is because it is the most important element. The color record coming next in importance is given the next highest value, etc.

By an arrangement of this sort, by simply changing the relative value of the different factors it is possible to emphasize any particular

phase of the work. The men willingly pay the greatest attention to the factor that has the greatest value, because it gives them the better record and because they know the reason for the change. For instance, if it is desired to emphasize quantity, we give a larger value to the time record and a lesser value to the temperature record. Production is then somewhat increased at the expense of quality.

While I could give many illustrations similar to the one just given of our cooking operations, I will give only one final illustration of how economy-progress records meet with equally great response. In the plant where this system was developed were employed over 1200 men, and perhaps half of these men had individual progress records and the rest came under some sort of group-progress record. Invariably the records proved themselves to be an incentive to greater productivity.

#### COST RECORDS OF WORK

Below is shown a foreman's detail job sheet which indicates the method we had for giving our maintenance foremen cost records of their work. It is obviously a difficult matter when dealing with maintenance and construction work to give quality or quantity records, as the work varies so much from day to day, so the only kind of records we could give the men were records of cost. The original suggestion to give these records grew out of the fact that we gave to each operating-department head a complete cost of operating his department, for which he was held responsible. As soon as he began to realize this responsibility, because all the repair materials were charged to him, he at once began to make intelligent criticism of the engineering department, and especially was he critical of the maintenance foreman if he was wasteful in the use of materials. As a result of this the maintenance foremen asked the master mechanic if they could not have job costs showing how economically they were doing their work, as they had no idea of the value of materials that they were using. The foreman's detail job sheet shown is the result of this request. It will be noted that the job is fully described, the total cost for labor and material to date is given, as well as the cost of labor and material for yesterday. Then below is listed the itemized cost of all materials used. The men soon became educated as to the value of the materials they were using, and we noticed a great



change in the amount of waste; in fact, we had frequent cases where maintenance foremen would bring scales into the mill to make sure that the storehouse was giving them full measure of materials, and we were soon obliged to get up a system of giving credit for material returned to the storehouse, in order to help foremen keep down their job costs. This was in no sense a form of contract system, for all of our maintenance and construction men were paid by the hour and did not receive any more money for doing a job economically.

Fig. 2 shows the concrete results obtained by giving the cost sheets to the department heads and job costs to the maintenance foremen. It will be noted there was a rapid increase in production from 1908 to 1913, also a rise in repair material used as well as an increase in the cost of maintenance labor. The fourth curve, showing the amount of material used for each dollar

spent for maintenance labor, is more or less a resultant of the two. The gradual rise from 1908 to 1911 in this curve was due to the increased material-consuming power of the maintenance men because of the introduction of labor-saving devices, such as pneumatic and electric portable tools. There was a drop in these figures in 1912 and 1913, but we were unable to get a real thought of economy started in the plant until the departmental-cost sheets and job-cost sheets were started. These were put into effect first in the beginning of 1914, and there was an immediate drop in the curve from an

FORM NO. 2	
FOREMAN'S DETAIL JOB SHEET.	
Job <u>2771</u>	Foreman <u>John Laffin</u> Date <u>1/10/16</u>
Name of Job <u>Install 2-35 Hp. Motors on Coarse Screens</u>	
Description <u>in West Mill.</u>	
<u>Electrical Dept. - Power Wiring.</u>	
Date Started <u>1/7/16</u>	Worked on <u>4</u> Days
Labor Cost to Date	<u>31.6</u>
Material Cost to Date	<u>7.35</u>
Total Cost to Date	<u>38.54</u>
Labor Cost Yesterday	<u>0.80</u>
Material Cost Yesterday	<u>6.41</u>
Total Cost Yesterday	<u>7.21</u>
DETAIL OF MATERIAL USED YESTERDAY.	
ITEMS.	PRICE.
2-1 1/2" Long-Turn Elbows,	0.51
4-1/2" Solder,	1.23
4-1 1/2" Type-E Condulets.	2.02
4-1 1/2" 4 Hole Porcelains,	0.64
1 Roll Oiled Lined,	0.24
1 Roll Friction Tape,	0.11
16-100 Amp. Terminals,	1.66
	<u>\$ 6.41</u>

FIG. 2. FOREMAN'S JOB SHEET

average of about \$2.15 worth of material spent for each dollar spent for labor, down to \$1.55 in 1914 and \$1.05 in 1915.

That this drop is due to the greater economy and thought in the use of materials is indicated by the fact that our maintenance crew was not very much reduced, the saving coming almost entirely in the use of materials.

The drop in production in 1914-1915 was due to war conditions which were unavoidable. It is a significant fact, however, that in spite of this drop in production the maintenance-material cost per ton of pulp was reduced to approximately half the amount under the conditions of higher production during the two preceding years.

In none of this work did we pay bonuses to a superintendent, department head, or workman; our salaries and wages were high, but payments were all on a monthly, weekly, or hourly basis. The increased effort, therefore,

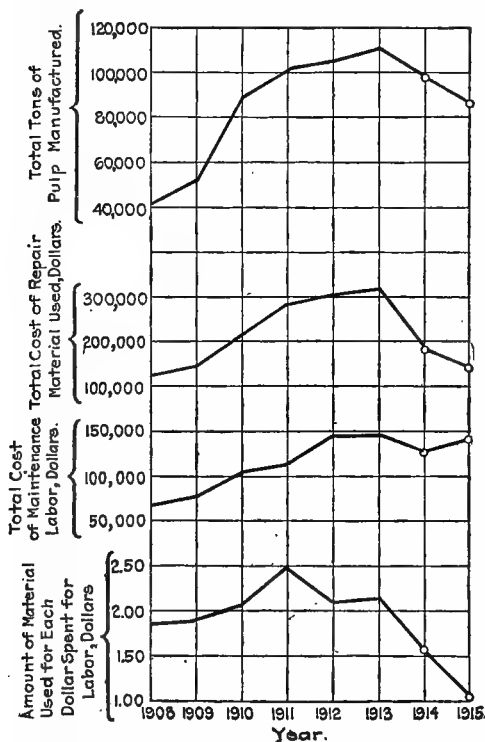


FIG. 3. SHOWING CONCRETE RESULTS OF COST SHEETS

came entirely from a desire within the individual to be productive. Of course this sort of creative effort produced great changes in operating conditions; we increased our yearly production from 42,000 tons to 111,000 tons without adding to the number of digesters for cooking the pulp, or wet machines for handling the finished product, and we changed our quality from the poorest to the very best.

Due to the intelligent suggestion which came from our men all over the plant we were able to make very radical changes in the manufacturing processes. Entirely new methods of preparing our wood, making acid, bleaching, etc., were created, all of which were paid for out of the earnings.

I maintain that this was all the result of the freedom our men were experiencing because they were working in an environment which stimulated thinking. They had ample opportunity constantly to increase their knowledge of the underlying natural laws of the process and were therefore able to realize the joy which comes from a conscious mastery of their part of the process.

This freedom to express one's individuality in constructive work according to law is the only real freedom, for freedom unrestrained by a consciousness of the universality of natural law leads to anarchy.

We should never lose sight of the fact that the degree of conscious self-expression which the workman can attain is in direct proportion to the ability of the organization to measure, for his benefit, the impress of his personality upon it. The most democratic industrial plant, therefore, is the one which permits the fullest possible amount of individual freedom to each member irrespective of his position, and at the same time is so sensitively adjusted that it reflects immediately the effects of his actions. If his actions result in injury to others, he will see that as a part of the whole he himself must also suffer.

I have made no attempt in this paper to touch upon our method of arriving at the proper financial compensation, as this is beyond the scope of the subject assigned to me. I feel that I should state, however, that in our mills in Canada, where the same scientific recording of operations is being developed, our wage rates are adjusted each spring after careful discussion with the representatives of our local labor organizations. This has proved to be a very just and satisfactory method, for the rates thus determined are really a consensus of opinion of both employer and employee, and once the wage question is disposed of, all are free to devote their energies to the intelligent solution of manufacturing problems. Constant agitation of the question of financial remuneration only detracts from the work, and our experience has invariably been that there will be plenty of

incentive to productive effort if the working environment is such that the workman can express himself as an intelligent human being.

Man is not an animal, but a free, self-determining mental center of consciousness, whose reason for existence is that the universal life may be able to deal with a particular situation in time and space and, by this means, be enabled to evolve a material universe organized to express the one great individual life of which we are all a part.

In conclusion let me say that I am well aware that to some of you this may seem like pure philosophical speculation, far removed from the practical affairs of everyday life. I have said nothing, however, that I cannot back up by any number of additional illustrations, and my hope is that the examples given will stimulate others to make similar investigations, so that we can fulfill our mission in this country by evolving an industrial philosophy which will have for its ultimate aim the continuous unfoldment of the latent powers in man.

ROBERT B. WOLF

NEW YORK

## XVIII

### APPRENTICESHIP IN THE METAL TRADES<sup>1</sup>

THREE problems of fundamental importance enter into industrial production: the material problem, the machine problem, the man problem.

The last might be called the *main* problem, for it is the most important of the three. It is also the most difficult to deal with, and the most neglected; perhaps it is the most neglected because it is the most difficult. Yet on its proper solution hinges largely the success of an industrial enterprise and its capacity to maintain itself in competition with enterprises of similar character.

All manufacturers can buy materials of approximately the same kind and grade at about the same price; they can also purchase or, if need be, design and make, or have made, machines of like productive capacity and cost as compared with those used by their competitors. Moreover, they can study the successful manufacturing methods of another concern and adopt them in full or in part and improve upon them. Yet when it comes to securing and maintaining the personnel and effectiveness of an industrial organization, only intelligent effort through many years will enable one manufacturer to attain advantages in this respect which another may possess by virtue of the efficiency of his human organization.

Efforts to teach the young man, whether young in age or experience, the knowledge or skill already acquired by his older brother are as old as mankind. With the social and economic changes which developed during the centuries, the character of the problem varied, changing at first from the need of a purely vocational to that of a more pronounced scholastic training.

During the last century, however, the vocational aspect again forged prominently to the front, especially in countries such as the

<sup>1</sup>From an address substantially as delivered before the Association of Iron and Steel Electrical Engineers, June, 1916. Revised by the author, 1920.

United States, in which industrial activities rapidly began to predominate. The system of education had perforce to accommodate itself to the new requirements. Thus the teaching of the mechanical arts developed on a large scale, and a marked impetus was given it in the United States by the industrial reconstruction period following the Civil War. As new industrial enterprises were started, and as older ones developed in size, their owners made it their concern to teach young men the practical work in which they themselves were engaged. Soon, under the influence of American genius, industry expanded at such a rapid pace that it became necessary to specialize in industrial processes to a larger degree than ever before. Somewhat misled by the immediate results of specialization, which permitted the effective employment of many semiskilled and even unskilled workmen, employers came to believe that the need for well-trained all-round skilled mechanics was now less important, and they discontinued to a large extent their efforts for systematic trade training.

But these employers failed to consider that the greater specialization of industry on the basis of wholesale production, and utilization of multitudes of workers, required a large number of highly trained men to lead and direct this ever-growing industrial army. They did not realize that the more complex machinery, through which specialization was largely made possible, also called for a higher type of all-round mechanics to design, construct, and install this machinery. About that time, also, manual training was being introduced into the public-school system, and employers readily shirked their responsibility for the training of craftsmen by shifting it to the public school, without, however, any assurance that the schools would be able to develop quickly and effectively the required type of industrial workers.

American employers soon became disillusioned. The exhibition in Chicago in 1893 displayed the products of the mechanical skill of foreign nations so impressively as to awaken American employers to the necessities of the situation. Once more they realized that final responsibility for training skilled workers must rest upon them, even though they might, as they should, take justified advantage of the valuable help which public schools could render. The thought was born anew among employers that only through the revival of the apprenticeship system, modified to suit new industrial conditions,

could the superior intelligent skill be secured by means of which they could fortify themselves against foreign competition.

A number of examples of effective trade training in industry can be cited; these, however, are only as a drop in the bucket when it is remembered that there are about 300,000 manufacturing establishments in the United States, each with its need of skilled and semi-skilled workers.

Most employers are giving but little heed to this pressing need. The average employer, not from necessity but because of thoughtlessness or habit, still prefers to get workmen whom someone else has trained. But if he can be convinced by concrete examples that he can readily train his own skilled workers to meet the special requirements of his business, he will quickly sense his responsibility and, with the usual enterprise and acumen of the American business man, apply himself seriously to the task.

It was in 1902 that the General Electric Company, employing at that time about 4000 men, established at its works at West Lynn, Massachusetts, a new apprenticeship system. This step was the outcome of a study of the reasons for the seeming failures of the then-existing apprenticeship systems. Briefly enumerated, these were as follows:

Under the old form of apprenticeship a boy was taken into a shop and turned over to a foreman, who was expected to teach him the trade. The foreman, himself very busy in his regular duties and usually more adapted by experience and inclination to the production of manufactured materials than to the training of boys, would turn the boy over to an assistant foreman, who in turn would pass him down the line until he landed under the supervision of a mechanic, skilled or partly skilled as the case might be, but not often able to impart his skill to the boy. Frequently, also, the run of work in a shop was not sufficiently varied to give to the boy broad experience of instructive character. Even though the boy's superior might possess the ability to impart to him his knowledge, and might also be able to give him such a varied assortment of work as to afford a broad opportunity to learn the trade, the apprentice was himself seriously handicapped by his own limited education. Employed at work that required the use of drawings, he could usually neither understand them nor could he make a simple mechanical sketch. If a mechanical

operation required the use of mathematical formulæ that were not included in his limited school experience, the apprentice would have to forego doing the higher grade of work that such knowledge would have brought within his range. The apprentice became, therefore, the victim of the daily or weekly requirements of the shop.

To overcome these difficulties, apprentices were placed under special supervisors, whose function it was to transfer the apprentices from one department to another in order to give them an equal chance and a broad opportunity for training. To the extent to which the supervisor of apprentices could harmonize the point of view of the employer with that of the apprentice, he would fulfill his dual function with satisfaction; but the practical conditions in the various departments often prevented the supervisor from doing full justice to his task.

In the industrial struggle of today, quite different from that of twenty-five or fifty years ago, it is more and more essential for those who wish to rise above the average employee not only to be able to do their work well but also to possess an intelligent understanding of the work in which they are engaged and an imaginative outlook as to the possibilities for better and more efficient work. Many employers fully sensed this situation and induced their apprentices to take evening courses at public schools and in other educational institutions, but with only meager success, largely because the day's work was in itself as much of a task as the apprentice cared to undertake and partly because the boy was really too tired at the end of the day to do good school work at night.

Realizing, then, that these factors were largely responsible for the failure of apprenticeship systems, the General Electric Company established in the Lynn Works special departments devoted exclusively to the training of apprentices, placed under the supervision of highly skilled men endowed by nature and by training with the faculty for teaching others. There are to be found within the big machine shops a small machine shop, and within the big wood-working shops a small patternmaking shop, set aside for training of boys under supervision of men well qualified for developing the boys' aptitude for such mechanical work. Readily accessible classrooms were constructed, in which every apprentice is required to devote, but on full pay, a part of his working hours to classroom



study and where, under competent instructors, he is taught those branches of technical knowledge that will assist him in attaining the goal of his mechanical or engineering ambition. At the same time an effort is made to develop in the apprentice an objective as well as a subjective point of view of the relationship between employer and employee, in order to impart to the growing worker greater loyalty to his work and to the man in charge of it.

Apprentices in the training room are required to perform work of commercial character, which would have to be done by others in the factory if it were not done by these apprentices ; in this way it is aimed to train apprentices "in industry for industry."

The idea of maintaining special training rooms in factories was new. The value of training apprentices on commercial work, carefully selected for its instructive character, lies in the fact that the elements of time, money value, and usefulness immediately impress themselves upon the mind of the apprentice, acting as a stimulus and incentive to him to put forth his best efforts.

The other new idea was the introduction of classroom instruction into the factory. The Company insists that every apprentice receive mental as well as manual training, in order that skillful, intelligent, and loyal artisans, and not human automatons, will be developed. Realizing that an apprentice is entitled to play and to rest in the evening after a day's work, and that he would unwillingly go to the classroom if it meant a partial loss of his wages or a restriction of his time for recreation, the Company inaugurated the plan of giving the classroom instruction during the working-day and without loss of wage to the apprentice.

The underlying reason for this procedure is based on the conviction that most boys leave school as early as permitted and go to work, partly because school has become to them a drudgery and partly because they want to earn money. The apprentice-school studies are therefore made so interesting and are so correlated to the practical work as to attract the apprentice, and his wages are paid whether he is working in the training room or studying in the classroom. Otherwise most apprentices would go into the classroom not because they like it but because they must, and consequently they would not get the full benefit from the Company's educational effort ; they would have eyes but see not and ears but hear not.

At first sight the comparatively large expenditure for salaries of classroom instructors and for wages paid to apprentices for non-productive time spent in classrooms would seem unjustified. Experience, however, has shown otherwise, for the added intelligence acquired in the classrooms makes the apprentice do more and better work in the shop.

In respect to entrance requirements, any boy sixteen years of age or over, normally developed, with a pronounced desire for the trade which he wishes to learn and with a successfully completed grammar-school course, is eligible for admission as an apprentice. In a few instances boys are accepted who have not fully completed the grammar-school course but can give adequate reason for their incomplete education.

We know that many a boy who has gone only through the seventh or eighth grade of the grammar school, but for one reason or another did not or could not graduate, will develop into a far better mechanic than others who have completed a prescribed school course and have received a certificate of graduation. Yet, in dealing with large numbers of apprentices it becomes necessary to deal with them in a fairly uniform manner. By insisting, therefore, on a completed grammar-school education as an entrance requirement, it is safe to start the educational program on the basis of such educational preparation by all apprentices. Moreover, we are thus assisting the public-school authorities in holding the boys to the end of the school course, so that they may learn there, as they can better learn in the public schools than in the manufacturing establishment, the fundamentals of education and the duties of citizenship and may obtain, at least to a small degree, that general cultural background which adds so much in later life to the enjoyment of life itself. Aside from the selfish aim, therefore, of obtaining a better educated class of boys, such method signifies an effort for coöperation with the public-school authorities, on whose coöperation, in turn, we have to rely in the successful carrying out of our own educational work.

All apprentices are required to serve a trial period of about two months, during which they are closely observed to ascertain whether they possess the natural ability for the chosen work and have the moral stamina and general intelligence required to successfully complete the course. Only those who give satisfactory promise during

the trial period are allowed to sign, in conjunction with their father or guardian, a standard agreement which outlines the conditions of apprenticeship. The apprentice is distinctly told that the agreement has no legal force and may be broken by him without fear of prosecution. He is made to understand, however, that the agreement is in the nature of a promise made by one gentleman to another: the Company, on the one hand, promising to teach the trade and to pay stipulated wages; the apprentice, on the other hand, promising to give satisfaction in his work and in his deportment.

Experience has shown that boys employed on this basis are more apt to live up to the agreement than if they were working under the impression that it is being used as a club to force them to continue at work. The percentage of apprentices who "jump" the course after signing the agreement is remarkably low; the average is considerably less than 5 per cent.

As for apprentice wages, the company decided to pay remuneration from the immediate beginning of the course, even during the trial period, and to pay sufficient wages to allow boys from poor families to enter the apprenticeship department on a self-supporting basis. Gradually the wage schedule increased with the general increase of wages in industry, until now apprentices receive at least \$5.50 per week at the start (increased in 1919 to \$8.64), with periodical increases at the rate of from \$1 to \$1.50 per week for each succeeding year of apprentice training. A cash bonus of \$100 is paid at the successful termination of the prescribed training period, when the apprentice is also awarded a Certificate of Apprenticeship, which entitles him to recognition as a full-fledged journeyman and outlines the course of training which he has successfully pursued.

The apprenticeship period for grammar-school graduates is four years, except in the case of molder apprentices, who may finish their course within three years. Iron and steel molder apprentices, however, must be at least eighteen years of age to undertake this somewhat more arduous work and are in consequence paid somewhat higher wages. The apprenticeship period for high-school graduates is three years, and these apprentices receive wages beginning with \$6.50 per week (increased in 1919 to \$10) and increasing to \$11 per week (increased in 1919 to \$15.84).

As far as business conditions permit, graduate apprentices are encouraged to remain in the service of the General Electric Company. There is no fixed standard of wages for graduate apprentices; each case is settled on its own merits. The average rate, however, is from \$3 to \$3.50 per day (increased in 1919 to \$5.60 per day at the start), with splendid prospects for advancement either in the service of the Company or in that of other industrial establishments.

Contrary to general practice, the recruit in the apprentice department is not required to do ordinary chores, such as sweeping floors or running errands, but is immediately put at a machine or at a bench to perform simple mechanical operations which are strictly a part of the trade that he desires to learn. The apprentice in training might, for example, sweep the floors ever so clean and carry messages ever so quickly and yet be naturally unfit for the trade. It is therefore essential to find out as quickly as possible whether the boy who wants to become a machinist has an embryo machinist in his makeup; if there is no future machinist in him, it is of course futile to attempt to draw one out of him. The sooner this is definitely determined, the better for the boy and for the Company; otherwise, both would waste valuable time, and the boy's progress would be retarded and his reputation injured if he should later be discharged for lack of natural ability. The stricter the process of weeding out during the trial period, the easier the subsequent task of training and retaining apprentices.

From a modest beginning in 1902, with one training room about thirty by forty feet in size and located in an available corner of an old factory building, the apprentice system has grown step by step and in keeping with the development of the Lynn Works, which now employ about 13,000 persons. Apprentice training rooms for machinists, toolmakers, and diemakers, for patternmakers and for foundry workers, are now located in Lynn.

The training room for patternmakers occupies a space of about 16,000 square feet, with an adequate equipment of woodworking machinery. The training room for machinists, toolmakers, and diemakers, located on the top floor of a modern factory building, covers a space 80 feet wide and 460 feet long, or an area of 36,800 square feet; in it is a very complete equipment of the machines usually needed for the mechanic, and representing now an approximate

investment of \$250,000. All rooms are well lighted and ventilated and are kept as clean as factory work will permit. The influence of the clean and orderly shop develops in the apprentice the tendency to personal neatness and cleanliness as well as orderly habits about his machine or bench.

All machines are of modern type; all are motor-driven and properly safeguarded. Similar conditions prevail in the training room for patternmaker apprentices and, indeed, in all of the apprentice training rooms.

In each apprentice department a wide variety of work is done and a broad range of machines is provided with which to do it; this excites the boy's interest and gives him an extensive and valuable practical experience. There is no hard and fast rule to govern the time during which an apprentice shall be trained on one kind of machine or on one class of work; this depends on the ability which he shows and, to some extent, is controlled by the character and volume of productive work which the department can secure. Generally, however, satisfaction is attained when an apprentice can do the required work with absolute commercial accuracy and a fair degree of speed.

In regard to accuracy of work, it is only fair to demand of the apprentice the same exactness as engineering and commercial requirements demand of the regular workers. If, from an engineering standpoint and from that of economical manufacture, two holes theoretically two inches apart from center to center can vary in their location by one thirty-second of an inch one way or the other without interfering with engineering efficiency, then any relative location of the two holes within two inches plus one thirty-second of an inch and two inches minus one thirty-second of an inch will be satisfactory commercial accuracy.

When an apprentice has learned to perform a particular operation quickly and accurately, he is often required to help in the training of another apprentice who has not yet advanced as far as he. He is made a leader in what is called a "team"; that is, he becomes a boy teacher of a boy pupil. The system disregards the age and service period of an apprentice; the more capable teaches the less capable, even though the latter is older. The boys are thus taught to respect the skill of those who have gained greater proficiency.

When the boy teacher has taught the boy pupil to understand the work and to do it accurately, the boy teacher is promoted to a different class of work, most likely in the capacity of a boy pupil to a yet more proficient apprentice.

By this team practice the supervisory capacity of six skilled adult instructors is expanded to meet the needs of some two hundred apprentices grouped in one training room. In many respects better results are thus obtained than if the instructors personally supervised each apprentice, for the boy teacher comes into closer relationship with his pupil. At the same time the executive ability of the boy teacher is developed, and the importance of accurate workmanship is indelibly impressed upon him as he strives to impress it on another. This method trains for future foremanship those apprentices who have native though undeveloped ability for handling men and supervising their work. Moreover, by this arrangement it is readily demonstrated how much ability and willingness to learn an apprentice possesses, for the boy teacher whose advancement is retarded by a slow pupil is quick to complain of his pupil's failure to grasp mechanical details or of his lack of interest in the work. If the complaint seems justified and is not due to the boy teacher's fault, the regular instructor endeavors by personal attention to stimulate the apprentice pupil. Sometimes he succeeds, but more often he confirms the boy teacher's judgment and is obliged to discharge the apprentice complained of.

An important part of the work in electrical manufacture has to do with the winding of coils, fields, armatures, and similar parts. Skilled winders are not plentiful; rapid expansion in the use of electrical power in industry and in public-service work is creating a greater demand for them. With this thought in mind the General Electric Company endeavors to train some apprentices in this particular line of work. Usually boys with a high-school education are employed to learn to wind armatures and fields and to test them for commercial use; they also strip and rewind defective fields and armatures, a particularly instructive practice for apprentices.

The time spent by apprentices in their respective training rooms amounts to about half the total period of apprenticeship, and varies somewhat with the capacity of the apprentice and with productive

conditions throughout the factory. Apprentices who have made good progress in the apprentice training room are often lent to foremen in factory departments, provided the work proposed offers educational value that fits into the schedule of the apprentice course. Generally, however, the entire last half of the apprentice course is spent in factory departments, where the apprentices gain enlarged experience and come in contact with many skilled workers. Yet the apprentice always remains under control of the apprentice superintendent and continues the prescribed daily classroom studies. If an apprentice loafs or lowers his usual standard of work or deportment after he has been transferred from the apprentice department, he is usually brought back to the training room to serve a discipline period before he is allowed to return to the factory department. One dose of this discipline usually cures.

Previous to the establishment of training rooms for apprentices foremen did not favor taking apprentices, because they were a care—white elephants, so to speak; they now prefer partly trained apprentices to many of the men from outside who claim to be full-fledged mechanics.

The apprentice training rooms are beehives of activity and models of clean and orderly workshops, equipped with various makes and styles of standard machine tools and appliances required for practical training and economical production. It should again be emphasized that all work done in these departments has a commercial value either for production, equipment, or repair purposes. Nothing is done merely for the sake of following pedagogical precepts or to make a fine exhibition of work. It is the eminently practical character of the training system which has its most wholesome influence upon apprentices and appeals strongly to them.

The same practical policy applies to all classroom work. The courses of study are carefully planned, first to conform to the apprentices' mental capacity, as denoted by previous school education, and second to teach those sciences that definitely dovetail into the operations to be performed in the chosen field of work. Grammar-school graduates start at the lowest rung of the ladder, while high-school graduates receive more advanced instruction, particularly in mathematics, mechanics, mechanisms, thermodynamics, magnetism, and electricity.

Every apprentice is required to pursue classroom studies for an hour and a half every day except during July and August ; during these months the classrooms are closed in order to give apprentices and instructors an opportunity to take a short vacation. The practical work in the training rooms, shop departments, and drawing and testing rooms, however, continues without interruption throughout the year. For the convenience of the various training rooms and shop departments, classroom attendance is distributed over the day, some apprentices starting at the beginning and some toward the end of the forenoon, others at the beginning and the balance toward the end of the afternoon. In order to segregate at frequent intervals the more capable from the less capable apprentices as far as the school work is concerned, the school year is divided into three periods ; advancement from one class to the other is dependent on satisfactory daily performance as well as on the results shown at periodical examinations.

The endeavor is to make the instruction concretely applicable to the practical work which the apprentices perform. Whenever possible the instructors speak in terms of materials and machinery, facilitating the understanding of the apprentice by exhibiting the objects to which they refer. The opportunities for doing this are, of course, excellent in the large establishment located at West Lynn, with its great variety of manufactures. High percentage record of an apprentice is a secondary object, although from an organization standpoint it may be a necessary one ; to make the apprentice understand, to make him think, and so to give him an industrial understanding, and to impart to him pertinent information and develop in him a general intelligence as well, is the paramount aim of the instruction.

Apprentices who have had a grammar-school education only and are trying to fit themselves for skillful molders, machinists, pattern-makers, instrument-makers, steam fitters, and the like are first taught the mathematical sciences as they relate to arithmetic and algebra, mensuration and plane geometry, and are also given an introduction into trigonometry. Abstract teaching is avoided as far as possible. As an example, the instructor does not call merely on a boy's memory by asking him to tell how much four times three times six is, but rather puts the same problem to him in its



application to industrial conditions by asking him how much electrical energy, expressed in certain units, is required to light a factory consisting of three workrooms, in each of which there are four arc lamps, each requiring six amperes, or units, of electricity for proper operation. In stating the problem in this way the apprentices are briefly told what an arc lamp is, are shown such a lamp and have its operation explained to them. They are also told briefly the meaning of an ampere as a unit of electrical measurement.

In the teaching of mensuration much emphasis is laid on the figuring out of surface space of floors, roofs, and walls, and of the weights of machine elements and materials. The teaching of trigonometry proceeds along similar lines, but, while all other apprentices are required to learn trigonometric functions and the solution of trigonometric problems, molder apprentices, on account of the shortness of their apprentice period and because their work would ordinarily not require such knowledge, are excused from this particular study; some, however, take it at their own request.

The teaching of mathematics and especially of mensuration enables apprentices to become acquainted with the very practical problems which they will meet later on as skilled mechanics, as foremen, superintendents, and engineers.

Another branch of the classroom work concerns itself with instruction in the elements of mechanics; the essentials of power transmission as it relates to pulleys, belts and chains, and to gearing; the mechanics and strength of materials, a knowledge of which will develop a better understanding of the characteristics and uses of materials of construction and how to calculate the required strength of a machine part under given conditions of load; and, in a brief outline, the prime movers as they utilize air, water, steam or other vapors, oils, or electricity as their motive force. Again, molder apprentices take only that part of the program which falls within their allotted apprentice period; and unless it is done at their request, they do not get instruction in magnetism and electricity, which in its elementary treatment is taught all other apprentices. Advanced electricity is given only to high-school graduates.

In all these subjects, so far as possible and practicable, problems relating to the industrial life of the apprentices are selected; with many of these problems the apprentices have come in contact in

their work in the foundry and shops, and the solution of many more will be required of them later on when they have become skilled mechanics, foremen, or superintendents.

A very important phase of the educational work relates to the teaching of mechanical and freehand drawing and of tool designing. The apprentices are first taught the use of drawing instruments in the making of straight and curved lines and combinations of the same and then are taught projection. In its further development the course teaches how to copy and later how to design simple and more complicated elements of machines and mechanisms. Special attention is directed to the necessity of proper dimensioning of drawings.

This instruction is not for the purpose of making mechanical draftsmen of the apprentices, although some with ability for such work will naturally graduate into positions as draftsmen and designers; it is, however, considered essential as a foundation for developing the ability of correctly reading and understanding mechanical drawings in accordance with which shop work is to be performed. Mechanical drawing is also a prerequisite for the subsequent instruction in tool designing. Much emphasis is laid on the teaching of tool design, for it is realized that good ability to design jigs, fixtures, and other auxiliary tools for economical manufacture of parts reacts upon and stimulates good ability in correctly designing the parts themselves so that they can be readily machined. Before this work is taken up apprentices are given a brief course in freehand sketching, in order that they may acquire the art and ability of expressing themselves quickly on paper in the language of the technical man. The art of good and quick freehand sketching, so much needed by the mechanic, the foreman, the superintendent, the designer, and the engineer, is all too frequently lacking or only insufficiently developed in these men.

Talks of a practical nature on subjects closely related to their shop training or to matters of allied interest are frequently given to the apprentices. In a particular case the superintendent was exhibiting a wrongly sharpened tool which he had found in use by an operative. The superintendent took advantage of this concrete instance of error to provoke a keen discussion of the right and wrong ways of applying mechanical principles to the cutting of metal, the

object being to draw out the information from the apprentices themselves rather than to offer it in lecture fashion. Other "practical talks" endeavor to explain natural phenomena, the practical applications of which the apprentices know intuitively and accept as a matter of course without usually being able to explain them. Why should the temperature at the top of a high mountain be considerably lower than at its base, when the top is so much nearer to the sun, the universal source of heat? Why should a one-inch drill, assuming for the purpose of discussion that it absolutely retains its size, drill a larger hole in cast iron than in steel? Such questions are pertinent illustrations of the practical character of the instruction, the one to show the effect of the density of the atmosphere, the other to bring out the grinding effect of pulverized cast iron as it crowds behind the drill.

Practical talks, moreover, offer a splendid opportunity for the works physician to speak of the importance of personal hygiene, accident prevention, proper treatment of injuries; and for superintendents, foremen, and department heads to explain special processes of manufacture or methods of business procedure.

High-school graduates who desire to become efficient draftsmen and designers, electrical testers and installation engineers, and technical salesmen go through a three-year apprenticeship. They receive instruction in the Engineering School of the factory, based upon a completed high-school course. Their mathematics starts with algebra and comprises instruction in trigonometry and analytical geometry as well as an introduction to calculus. Special emphasis is laid upon advanced mechanical drawing and machine design, mechanics and mechanisms, thermodynamics, elementary electricity, electrical measurements, and the theory and operation of direct and alternating-current electrical machinery. The character of the instruction is like that previously described for grammar-school graduates, but is more advanced and intensified in degree, as is also the practical work, first in the machinist training room and then in the drafting and testing departments as well as in the engineering offices.

The Apprentice School has nine terms, the Engineering School seven terms; this makes it possible for the apprentices to complete their school work during the prescribed periods of apprenticeship, even if they should be held back in one or two classes.

The Company is also concerned with the development of a certain amount of social life among the apprentices; it realizes that "all work and no play makes Jack a dull boy." One or two picnics in the summer, some dances during the winter, frequent informal meetings in the apprentice clubroom, an annual dinner for the Apprentice Alumni Association, are among the recreational activities encouraged by the Company.

This brief description of some of the important features of the General Electric Company's apprenticeship system, now extended to its factories in various parts of the country, is presented in the hope that it will stimulate active interest in one of the most pressing needs of industry; namely, the effective training of an adequate supply of intelligent, skilled workers, who take pride in their work, whether it be that of a mechanic, or an engineer, or that of an executive supervising mechanics and engineers. At the same time it is hoped to make clear that what has been done by one large corporation on a large scale can be done as efficiently by smaller corporations on a correspondingly smaller scale. The same fundamental principles of training apply, and the same effective results can be obtained; the smaller plants have simpler needs, which can be accommodated by simpler organization and equipment.

When an employer or his responsible assistant has once grasped the importance of training "for industry in industry" and has learned to understand the fundamental lines along which an effective system for the training of men must be developed, he will always find ways and means of translating his enthusiasm and determination into practical results.

MAGNUS W. ALEXANDER

NATIONAL INDUSTRIAL CONFERENCE BOARD

## XIX

### PROFIT-SHARING IN THE UNITED STATES<sup>1</sup>

THE intensity of the industrial unrest of the last decade brought in its train numerous analyses of its principal causes. Among these the matter of the relatively low incomes of the working classes seems to rank first and foremost. To augment the workers' earnings without seriously disturbing the regular run of trade and industry has become the desideratum of students of labor questions, statesmen, philanthropists, and employers. In the opinion of a considerable number of such public-spirited citizens profit-sharing furnishes one of the least costly and most effective methods of achieving the desired result.

A question as to the meaning of profit-sharing immediately arises. The term "profit-sharing" has been extended in popular usage to include numerous gain-sharing or bonus schemes the essential character of which places them outside of a correct interpretation of the term. Many of the schemes known as profit-sharing systems, although providing some supplementary remuneration to the regular earnings of the beneficiaries, do not bear any direct relation to the actual earnings of the enterprise and cannot, therefore, be classified as involving the principle of profit-sharing in the proper sense of the term. As a matter of fact, very few of the methods adopted by American employers for the purpose of augmenting the ordinary earnings of their employees can properly be called profit-sharing as defined by the International Coöperative Congresses.<sup>2</sup>

<sup>1</sup>From *Journal of Political Economy*, Vol. XXVI (1917), pp. 1019-1033.

<sup>2</sup>The term "profit-sharing," strictly speaking, was defined by the International Coöperative Congress, held in Paris, France, 1889, as "an agreement freely entered into, by which the employees receive a share, fixed in advance, of the profits." The same congress defined the term "agreement" as covering, "not only agreements binding in law, but as including also cases where the agreement is only a moral obligation, provided it is honorably carried out." The term "profit" is to mean "the actual net balance or gain realized by the operations of the undertaking." A "share" is stated to be "a sum paid to the

Before proceeding any farther it is necessary to define exactly what in the following article is meant by the term. The understanding of the writer is that profit-sharing, in order to be genuine, must contain the following elements: (1) aggregates to be distributed to the participants, or individual shares, are to depend principally upon the earnings of the business; (2) the proportion of the earnings to be distributed is to be definitely determined in advance; (3) benefits of the scheme are to extend to at least one third of the ordinary wage-earning or salary-earning employees. The formulated definition, although less rigid than that of the Coöperative Congresses, excludes from the category of profit-sharing all schemes under which bonuses based upon individual efficiency are paid, usually associated with the various phases of scientific management. It further eliminates from consideration actual profit-sharing schemes the benefits of which are limited to a selected few of the better-paid executive or supervisory employees.

Different reformers (some students of industrial problems, as well as employers) have frequently addressed themselves to a consideration of profit-sharing with enthusiasm and hope. Profit-sharing, in the opinion of President Emeritus Eliot, of Harvard, may furnish one of the principal means for a satisfactory solution of the industrial strife of our present day.<sup>1</sup> The effectiveness of such schemes in minimizing class conflicts, however, has never been appraised. Following the publication of the latest edition of Gilman's "Profit-Sharing between Employer and Employee" in 1896, no comprehensive survey of the extent of genuine profit-sharing in the United States was made until recently. Such a survey now appears in one of the publications of the United States Bureau of Labor Statistics.<sup>2</sup>

employee out of the profits," such share to be "dependent upon the amount of the profits." The share given to the employee "shall not be indeterminate"; that is, "it must not be a share which an employer fixes, at the end of some period, at his absolute discretion, as distinguished from a prearranged basis." The relative proportion of the total working force of a concern that must share in the profits in order to establish real profit-sharing conditions was stated to be "not less than 75 per cent." (*Bulletin de la participation aux bénéfices*, Paris, Tome XIX (1897), pp. 220-222, cited by D. F. Schloss, *Methods of Industrial Remuneration*, chap. xvii, London, 1898.)

<sup>1</sup> Charles W. Eliot, "Profit-Sharing," in "Profit-Sharing and Scientific Management" (four addresses. Efficiency Society of New England, Boston, 1914), pp. 3-9; also "The Road to Industrial Peace," *The Nation's Business*, August, 1917, p. 16. <sup>2</sup> "Profit-Sharing in the United States," Bulletin No. 208.

The precise nature of this report may be inferred from the fact that in the course of its preparation all profit-sharing plants known to have been in existence were visited for the purpose of examining carefully the nature of the schemes in operation, their objects, and the results achieved. This study reveals the fact that there are at the present time in operation in the United States sixty genuine profit-sharing plans. The number of employees employed under profit-sharing agreements does not exceed thirty thousand—an insignificantly small group when compared with the total wage-earning population of the country.

The existing profit-sharing plans are of comparatively recent origin, only seven of them—or about one ninth—having been established prior to 1900. Twenty-nine—or almost one half—have been established since 1911. Over two thirds have been in operation less than ten years. Of the latter group, twenty-one, or about one third of all, were put into effect in 1914, 1915, and 1916.<sup>1</sup> Over six tenths of the profit-sharing establishments are located in three states,—Massachusetts, New York, and Ohio,—and more than one half of them are in the North Atlantic section of the country.<sup>2</sup> The size of the twenty-eight profit-sharing establishments, as indicated by the average number employed during a representative period, reveals the fact that more than seven tenths of those reporting employed less than three hundred people and that only slightly over 10 per cent employed one thousand or more.<sup>3</sup> Of the thirty-seven establishments reporting the proportion of the total employed who participated in the distributed profits, nineteen, or 51.4 per cent, reported 80 per cent and over participating; thirteen, or 35.1 per cent, reported 60 to 80 per cent participating; four, or 10.8 per cent, reported 40 to 60 per cent participating; and only one reported 20 to 40 per cent of all the employees sharing in the profits.<sup>4</sup>

In nine tenths of the plans the principal prerequisite for participation is the permanency of affiliation with the employing company, as shown by a specific length of continuous service. The minimum of continuous service required varies from three months to three years, the length of time specified in more than one half of all the plans

<sup>1</sup> U. S. Bureau of Labor Statistics, Bulletin No. 208 (1917), p. 17.

<sup>2</sup> *Ibid.* p. 18.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.* p. 19.

being one year or less. Thus practically all the plans exclude from participation the so-called shifting part of their working organization, confining the benefits to their more or less permanent employees. In about one eighth of the plans in operation employees, in order to participate, are required to file a written application especially provided for that purpose. Such applications are usually perfunctory statements signed by the employees to the effect that they promise to do faithful work and be loyal to the company. In one instance employees obligate themselves contractually to share in the possible losses of the year's business in proportion to their earnings, but not to exceed 10 per cent. Under this plan 10 per cent of the weekly earnings of each of the participating employees is retained by the company until the end of the distribution period, when the amounts thus retained are returned to the employees together with their share of profits for the year. In the great majority of the plans studied the basis for computing individual shares is relatively simple; namely, the amount of earnings of the participants. The individual shares in such instances are determined by dividing the employees' part in the divisible fund by the aggregate of wages of the participants in order to obtain what is usually called the profit-sharing dividend, and then multiplying this dividend by the respective earnings of each of the participants.

In all of the plans except one, discharge and leaving employment act automatically as causes for forfeiting the share of profits for the current year. Under one plan, only a discharge for cause results in forfeiture; other discharges, being more in the nature of permanent lay-offs on account of lack of work, do not deprive employees of their proportionate share of the profits. Some of the plans under which shares of profits are paid in stock or in the form of savings accounts penalize those leaving employment more severely than those who are discharged, it being specified in these instances that those leaving forfeit some part of the share of the profits of the previous year—usually from one fifth to one third—in addition to the share of the current year's profit. The provision that death shall be a cause of forfeiture occurs only in about one half of the plans; in the other plans it is specified that the pro-rata share of the deceased employee shall be paid to his family or dependents. In profit-sharing plans



under which the shares of profits constitute some proportion of the dividends paid on capital the amounts of forfeited shares are usually retained by the employer. In other plans the amounts forfeited do not revert to the employer, but are apportioned instead among the participating employees.

The majority of plans in operation specifically provide that employees temporarily laid off but otherwise eligible to participate and ready to return to work upon call be not barred from participation. Their shares in such instances are based on their actual earnings. In one third of the plans cases of lay-off are treated "each upon its own merits." The same treatment as that of employees laid off is accorded to those taken sick, provided the sickness does not extend "over an unreasonably long period"—usually not over six months. Under one plan only is it specifically stated that sickness of an employee carries with it a forfeiture of his share of the profits. In this instance, however, the company maintains a special fund for the benefit of its sick employees.

Under thirty-two plans, or more than three fourths of those reporting, the shares in profits were paid fully in cash. Five reported as paying in "part stock or savings account or common fund and part cash." Of these the following proportions were paid in cash: one, 99 per cent; one, 90 per cent; one, 85 per cent; one, 80 per cent; and one, 10 per cent. Under two plans the shares of profits were credited to a common fund, which was utilized for the accumulation of a pension reserve which was to be made up in equal parts of the shares of profits and contributions by the employees.

The benefits accruing to the participating employees as a result of the operation of the profit-sharing plans during one representative distribution period, in terms of a percentage of the regular earnings of participants, are shown in the table on page 254.

Under almost one third of the plans the profit-sharing dividend on the regular earnings of the participants was less than 6 per cent. Slightly over one third of the establishments paid dividends varying from 6 to 10 per cent. The remaining third of the establishments paid dividends of 10 per cent or more. Of the latter, five establishments paid profit-sharing dividends of 20 per cent or more.<sup>1</sup>

<sup>1</sup> U. S. Bureau of Labor Statistics, Bulletin No. 208 (1917), p. 19.

PERCENTAGE OF REGULAR EARNINGS RECEIVED AS SHARE OF PROFITS IN  
THIRTY-FOUR PROFIT-SHARING ESTABLISHMENTS

CLASSIFIED PERCENTAGE OF EARNINGS RECEIVED AS SHARE OF PROFITS		NUMBER OF ESTABLISHMENTS
Under 2	. . . . .	1
2 and under 4	. . . . .	6
4 and under 6	. . . . .	4
6 and under 8	. . . . .	7
8 and under 10	. . . . .	5
10 and under 15	. . . . .	5
15 and under 20	. . . . .	1
20 and under 30	. . . . .	1
30 and under 40	. . . . .	2
40 and under 50	. . . . .	1
50 and over	. . . . .	<u>1</u>
Total	. . . . .	34

Three main reasons may be presented as accounting for the relatively low profit-sharing dividends paid under the plans. They are (1) the small proportions of their net profits that employers are ready to share; (2) the rather large numbers of beneficiaries; and (3) the method used in some of the plans in determining the relative interests of employer and employees in the divisible fund. The last-mentioned reason is the least apparent and needs a brief explanation. In the plans under which the method of distribution explains the low profit-sharing dividends it is usually provided that net profits set aside for distribution are to be apportioned between employer and employees "in proportion to their respective interests." The employer, who is invariably the formulator of the scheme, usually assumes that his interest in the divisible fund is represented by the amount of his capital, while that of the employees can best be measured by the labor pay roll. Aside from the fact that this assumption is unsound, —the earning power of capital rather than its amount being more analogous, if at all comparable, to the labor pay roll,—this method of determination of relative interests results in a distribution of the fund in a ratio of at least three to one in favor of capital, for the reason that the annual cost of labor seldom exceeds one fourth of the amount of capital invested. That the method of determining the relative interests of the participants is largely responsible for the low

dividends paid may more clearly be seen from the fact that the only profit-sharing establishment in the United States—moderately successful—that has been paying considerable profit-sharing dividends (an average of 85 per cent for the period of 1907-1916) based its relative-interest theory upon the earning power of capital instead of its amount. As a result of this, distributions were made at the ratio of about three to one in favor of labor. A computation based upon actual figures shows that had the usually prevailing notion of relative interests been applied in this establishment the distribution ratio would have been quite different, namely, five to one, and in favor of capital.<sup>1</sup>

From a study based upon the facts and figures found in the recent report of the Federal Bureau of Labor Statistics, supplemented by personal observations, the following conclusions may be drawn:

1. Almost seven tenths of the profit-sharing plans examined by the mentioned report of the Bureau of Labor Statistics yielded to the beneficiaries an annual augmentation of their earnings of less than 10 per cent. Therefore, if labor difficulties are to be solved through considerable augmentations of the incomes of the employees, profit-sharing, as it stands at the present time, will not do it. No one at all familiar with the nature of the present-day wage conflicts can possibly venture the opinion that even an all-around wage increase of 10 per cent will contribute materially toward the establishment of industrial peace and the creation of a general harmony of interests.

2. If, again, industrial peace is to be brought about by a better understanding between employer and employees and the development of mutual confidence based upon some degree of democratization of industry, profit-sharing, in its present form at least, can hardly render any appreciable assistance. The profit-sharing employer is just as keen about his traditional prerogatives to hire and fire and to run his business regardless of the opinion of his employees as his non-profit-sharing confrères. Trade-unionism and collective bargaining are no more popular in profit-sharing establishments than elsewhere. In fact, no profit-sharing firm is known to have in operation any system of collective bargaining or of definitely established friendly relations with trade-unions. In this connection it may be of interest to observe that one of the oldest, most widely known, and most successful profit-sharing employers specifically excludes from

<sup>1</sup> U. S. Bureau of Labor Statistics, Bulletin No. 208 (1917), pp. 37-44.

the benefits of his scheme certain groups of his employees who through unionization have raised their rates of wages "to an unusually high point," on the theory (taught him by experience) that "good union men are, as a rule, poor coöperators." On the contrary, instead of evoking good will, profit-sharing, on account of its arbitrary character under which employers unconditionally reserve to themselves the privilege to discontinue or modify the entire arrangement, is a rather potent breeder of suspicion and distrust.

Although substantially agreeing that their plans have greatly improved their relations with the employees and contributed considerably to the stabilization of their working force, profit-sharing employers disagree greatly as to the results achieved with reference to increasing the individual or collective efficiency of the participating employees. Only three out of sixty stated definitely that increased efficiency has resulted; and these have paid unusually high profit-sharing dividends to their employees in the past. Aside from profit-sharing employers, neither employees nor employers have any confidence in profit-sharing. As far as the former can give expression to their opinions, they have put themselves on record as opposed to it.<sup>1</sup> This attitude of employees toward such schemes is usually explained by the fact that, in the opinion of their leaders, profit-sharing plans have an inevitable tendency to hinder the development of trade-unionism and collective bargaining. Labor leaders are of the opinion that these schemes make increased earnings uncertain, contingent wholly upon employers' profits and payable only "at their own sweet will." An informant belonging to a labor organization explained his opposition to profit-sharing on the ground that "there is no sense in playing a game the rules and regulations of which are formed without the consent of one of the principal parties concerned, such rules, furthermore, being subject to change at any time without common consent." Workmen, he said, prefer unqualified increases in wages to a problematical share in the employers' enterprises in the management of which they do not partake. Employees, furthermore, have no faith in profit-sharing, because under only one of the plans in existence are they granted the privilege of inspecting the books of

<sup>1</sup> For opinions of representative labor men see "Profit-Sharing by American Employers," National Civic Federation, Welfare Department, Report (1916), pp. 233-243.

the employer in order to convince themselves that the full share due them has been distributed. Suspicion is further augmented because under a majority of the plans the prospective beneficiaries are not even given an inkling as to the specific proportion of the profits that their employers are willing to share. What is there then, employees repeatedly say, to prevent an unscrupulous employer from juggling his profit-and-loss account in order to avoid the payment of the promised benefits?

The attitude of profit-sharing employees toward such schemes is interesting and instructive. As a rule this attitude varies with the nature of the position held by the informant and with his general views on industrial questions. In all, three distinct attitudes were observed; to wit, complete approval, absolute condemnation, and a general indifference which took profit-sharing as a matter of course. Profit-sharing employees who hold well-paid supervisory or executive positions were definitely in favor of the plans. To this small group of participants the scheme appeared to be an actual realization of a state of community of interest between employer and employee. Among the bulk of the ordinary wage-earners two distinct opinions prevailed. If the informant happened to be a member of a trade-union or was an ardent believer in organized labor and collective bargaining, his opinion on profit-sharing was analogous to those of the labor representatives cited above; namely, absolute disapproval of the scheme irrespective of the benefits that might accrue to the participants. To informants of this group the profit-sharing plan was a carefully planned attempt on the part of the employer to stimulate production, forestalling at the same time the possibility of collective demands for higher wages and better conditions of employment. The proportion of participating employees that expressed this opinion was not very large and constituted, perhaps, not more than one fifth of those interviewed. The attitude of the great majority of the participating employees was one of general indifference. Profit distributions were taken as a matter of course, were expected, and were relied upon in the balancing of their income and expenditure accounts. The employers' motives were not questioned as long as distributions continued at regular intervals. If, however, the shares paid grew less or their distribution irregular, suspicion was engendered and dissatisfaction with the scheme aroused.

The profit-sharing field is rather unique in the sense that under its arrangements additional duties carry with them no new rights. Under most of such schemes the employees are constantly reminded of the fact that they are no longer mere employees, that they are partners in the business and are therefore expected to conduct themselves as such—to avoid any moves or acts, such as requests for better conditions and higher wages, that will inconvenience the business. These new duties, however, involve no established rights to benefits, for each of the schemes specifically reserves to the employer the right (1) to determine which of the employed shall participate and under what conditions they may do so, (2) to hire and fire at pleasure, and (3) to discontinue or modify the entire arrangement without notice or consent of the employees.<sup>1</sup> Legally shares in profits thus become mere gratuities, which the employer may or may not dispense.<sup>2</sup>

That profit-sharing is not popular with employers may easily be inferred from the little headway that such wage schemes have made in the United States as well as from the very small number of employees working under profit-sharing conditions. Employers have but little faith in profit-sharing, because they cannot see how distributions made upon any other basis than that of individual efficiency can possibly contribute to the augmentation of their profits.<sup>3</sup> Considered as a direct stimulus to efficiency, real profit-sharing cannot possibly succeed, because, under it, individual shares are to bear no direct relation to anything but the earnings of the business. Again, some employers feel that from a strictly equitable viewpoint employees admitted to participation in the profits are morally bound to be willing to share in the possible losses of the business. Unfortunately, aside from the fact that ordinary workers do not earn

<sup>1</sup> Commenting upon a certain pension scheme under which the annuity allowances to be granted are expressly described as not a "right" of employees, *Babson's Confidential Labor Bulletin*, L-83, August, 1917, says: "We do not believe, though, that a plan of this kind meets the demands of labor in these days or is quite in tune with the spirit of the age. If we are not mistaken, there is a growing demand among workers for a recognition of rights over and above wages. Clients should not expect a plan of this kind to exercise any influence on radical employees."

<sup>2</sup> For a detailed discussion of the legal status of profit-sharing, see U. S. Bureau of Labor Statistics, *Bulletin No. 208*, p. 6.

<sup>3</sup> The desire for increased profits, and not philanthropy, was responsible for the origin of most of these schemes. U. S. Bureau of Labor Statistics, *Bulletin No. 208* (1917), p. 170.

enough to maintain a satisfactory standard of living,<sup>1</sup> much less to assist employers in meeting business losses, one may appropriately doubt the wisdom or even the desirability of asking anyone to share in the losses of an enterprise the management of which was to him a sort of *terra incognita*—a sphere absolutely outside of his legitimate jurisdiction or even inquiry.<sup>2</sup>

The degree of effectiveness of these schemes depends directly upon the amount of benefits accruing to the participants. These benefits have been rather small, equivalent in many instances to less than what ordinarily grateful employers in thousands of establishments are in the habit of distributing as Christmas gifts in the form of cash bonuses, "gold pieces," and turkeys. Profit-sharing does not even succeed in evoking any of the stimuli to efficiency that Christmas gifts usually do—perfunctory "thank you" and some additional good will to last until after New Year's Day. On the contrary, no matter how large or small the amounts distributed may be, the one-sidedness of the arrangement and its absolute control by the employer make the participants feel suspicious lest they do not get all they should. For entirely different reasons this feeling of dissatisfaction and lack of confidence in the value of the scheme appears also in the mind of the employer. Somehow or other he cannot help feeling that from the point of view of greater profits more satisfactory results could be obtained with less pretense and annoyance, through improvements in working conditions and increases in wages based upon the payment of bonuses for individual efficiency.

What then is, after all, the *raison d'être* of the existing profit-sharing schemes, few though they may be? To this question the following answers may be suggested:

1. The advertising value of the schemes, the very name of which is high-sounding and appeals to the popular mind. The advertising value of profit-sharing, it was said, was particularly great in mercantile establishments which cater to the trade of working people, such as grocery and department stores and mercantile institutions

<sup>1</sup> Cf. W. Jett Lauck and Edgar Sydenstricker, *Conditions of Labor in American Industries*, New York (1917), pp. 357-363.

<sup>2</sup> The same argument could, of course, be advanced against participation in the profits by employees who do not directly assist in the management of the business.

selling their goods on the installment plan. Managers of two such establishments were certain of the beneficial value of their profit-sharing plan in this respect.

2. The nature of some business organizations, under which it is difficult to correlate directly individual efficiency with its corresponding reward. The value of this factor to the employer was clearly brought out by the vice president of the Executives' Club of Detroit in an article entitled, "Where Profit-sharing Fails and where it Succeeds." The author says: "Considered merely as a stimulus to increased production and greater net gain, profit-sharing is of particular value in plants where (1) individual efficiency cannot yet be exactly measured, or where (2) much work is done far away from supervision, or where (3) longevity of service is necessary to preserve the quality of the product or to guard trade secrets, or where (4) a supplement to the wage system promoting individual efficiency is needed to minimize plant waste."<sup>1</sup>

3. The effect of the schemes upon the labor turnover. Profit-sharing, particularly in the establishments in which the business is prospering and in which distributions are made at regular intervals, does seem to have a beneficial influence upon the stability of the organization. One profit-sharing employer, who made a very careful study of the effect of his plan, describes this effect as follows: "It [profit-sharing] works precisely like an increase in wages, but is more valuable because the employee, in order to receive his share, has to wait till the end of the distribution period, a fact that makes him hesitate before quitting, which would naturally involve the forfeiting of his share in the profits."

4. The momentum of some of the older plans which makes profit-sharing a sort of tradition which is difficult to abandon.

5. The sense of social justice of some employers. To this factor is due the existence of three profit-sharing schemes the principal object of which was stated to be "an equitable distribution of the profits of the undertaking, as a matter of justice, irrespective altogether of hopes for increased efficiency."

6. The belief of some employers that profit-sharing will develop good will, diminish industrial strife, and stimulate efficiency, obviating at the same time, perhaps, the necessity of granting increases in wages.

<sup>1</sup>*System Magazine*, March, 1916.



An examination of the causes specified by employers as having been responsible for the abandonment of profit-sharing plans that they are known to have had in operation reveals the interesting fact that many of the plans were discontinued because the new order of things failed to appeal to the prospective beneficiaries, who preferred the certainty of ordinary increases in wages to the uncertainty of the potential profits at the end of the distribution period.<sup>1</sup> Demands on the part of the new partners for increased wages usually appeared unreasonable and unfair to the employer, who quickly decided to abandon the scheme. One student of this question has summarized the nature of profit-sharing in its bearing upon this conflict of opinion as follows:

It is obvious that if profit-sharing is based upon favor, the so-called divisions of profits are nothing more nor less than Christmas presents or other periodical gifts and therefore cannot be considered as a serious economic factor.

If profit-sharing is predicated upon the mutual rights and obligations arising out of relation of employer and employee, or if it is based upon some equitable right or obligation flowing out of that relation, it is then permitted to ask at what point in that relation, or under what circumstances, does the right to demand an increased wage cease and the right to demand a share of profits begin?

Unless there is some method of general application by which that point may be established, it comes down to this, that the employer, and he alone, can say when, to what extent, and under what circumstances the employee shall be permitted to exercise his supposed right—an arrangement which not only makes the employer the umpire but permits him to change the rules in the middle of the game.<sup>2</sup>

One cannot help but feel that the illogical character of profit-sharing, as outlined briefly in this article as well as by the authors quoted, presents one of the reasons why genuine profit-sharing plays such a negligible rôle in the wage systems of advanced industrial countries. The effectiveness of any economic arrangement does not necessarily depend, of course, upon its power to appeal to logicians or jurists. Profit-sharing has failed to become of any consequence among the other wage systems for the simple reason that it has failed to appeal to the instinct of economic self-interest of capital and

<sup>1</sup> U. S. Bureau of Labor Statistics, Bulletin No. 208 (1917), p. 166.

<sup>2</sup> Francis X. Butler, article in "Profit-Sharing by American Employers," National Civic Federation, Welfare Department, Report, pp. 258-259.

labor and because its tendency to increase efficiency and profits, on the one hand, or appreciably to augment the earnings of the employees on the other, has been very limited.

Earnest advocates of profit-sharing may take exception to these conclusions. They may state that the failure of profit-sharing to make any appreciable headway among other wage-payment systems is due to the fact that it is being operated under unfavorable conditions. President Eliot may rightly emphasize the point that the elements or "adjuncts" which he considers as essential to the success of profit-sharing, such as large distributions, welfare work, pensions, sale of stock to employees at reduced rates, and "coöperative management,"<sup>1</sup> are seldom found in conjunction with the existing profit-sharing plans. This is substantially correct. The report of the Federal Bureau of Labor Statistics referred to above shows that almost three fourths of the plans distributed shares equivalent to less than 10 per cent of the ordinary earnings of the beneficiaries; that is, amounts not sufficiently large in the opinion of President Eliot<sup>2</sup> to affect the efficiency and develop a sense of partnership on the part of the employees. Although many of these establishments are known to be engaged in some sort of welfare work, few of them are large enough and financially stable enough to install and maintain pension funds. Many of the profit-sharing firms are small and have no marketable stock to sell to their employees. And, as brought out in the preceding pages, very few profit-sharing employers manifest any great interest in what President Eliot terms coöperative management. The absence of some of the factors thought of as essential to the success of profit-sharing raises the question as to the reasons for this absence. And, as far as one may judge correctly from the opinions of numerous employers, the answer to this question is: genuine profit-sharing—that is, profit-sharing not related directly to individual efficiency—does not pay.

BORIS EMMET

<sup>1</sup> Dr. Charles W. Eliot, "The Road to Industrial Peace," *The Nation's Business*, August, 1917, p. 16.

<sup>2</sup> *Ibid.*

## XX

### PROFIT-SHARING IN THE BAKER MANUFACTURING COMPANY<sup>1</sup>

THE year 1893 was a bad year. It was the year of the panic. Our employees did not earn their dividend, nor did they earn it the next year. In the spring of 1894 it was very difficult to keep running. Money was difficult to borrow, collections were poor, and orders scarce. Common labor in those days commanded \$1 a day. Concerns about us cut wages, and we decided that the only way to keep going was to cut wages. We called the men together and announced a cut. They did not like it. We asked the men to come together with us and try to devise some method of profit-sharing for the future, but they were not interested in sharing profits with a concern that had no profits to share. As time went on, profits again appeared and the year 1897 was particularly prosperous, and in the spring of 1898 we declared an extra 10 per cent dividend.

At each of the annual meetings the matter of profit-sharing was brought up. Nothing was done, however, until the spring of 1899. Then the president, Mr. Almeron Eager, came out and said he was willing to share profits. He said, "The Bakers have made a success of the business, and if they want profit-sharing, I for one am willing that they should have it." The other stockholders agreed, and a liberal form of profit-sharing was devised. They decided to become authorized to issue \$300,000 of stock: \$200,000 to be preferred and issued to the old stockholders for their old stock, two shares of the new for one share of the old; the other \$100,000 to be common stock and issued in profit-sharing as profits were earned.

At this time they had \$208,000 of net assets, \$8000 in excess of the new preferred, and they decided that to get the good-will of the men they would pay them a 10 per cent cash bonus on their past

<sup>1</sup> From an address before the Second Annual Industrial Service Conference, Milwaukee, Wisconsin, April 28, 1919.

year's wages, and any small amount left over would be paid to the stockholders as an extra dividend. The men were called together. There was one fellow who refused to come and advised some of his fellow men not to come. He told them, "They are only going to cut wages again."

At the meeting the men were paid a 10 per cent cash bonus on their past year's wages and told that in the future the Company would share its profits liberally with them. They were very much surprised. It was explained that an inventory would be taken each year, and if after paying the regular 5 per cent dividend on all stock there should be a gain, 10 per cent of it was to be put into a sinking fund and the rest divided between preferred stock and employees in proportion to the earnings of each. Employees in this case meant all persons in the employ of the Company at the factory for over two years, managers as well as laborers and mechanics.

If the employees should receive during the year \$30,000 wages and preferred stock \$10,000 dividends, then the division was to be between the employees and preferred stockholders as thirty to ten. Three fourths of the gain after setting aside the sinking fund would go to employees and one fourth to preferred stockholders. This meant we capitalized labor at twenty times its earnings,

The first year went by, and we figured up and found we had 60 per cent to add to preferred dividends, bringing our total dividends up to 8 per cent, and we had 60 per cent to add to employees' wages. These amounts were not paid in cash; only 15 per cent was paid in cash and the other 85 per cent in common stock.

The directors had decided that it would be the policy of the Company not to buy the stock. They did not wish to draw cash out of the business by buying the stock; they wished to buy labor-saving machinery, enlarge their plant, and put themselves in better shape to compete. But there was one fellow who wanted to sell. He had three or four shares, and the president said, "It is common to look upon common stock as watered stock, and we want to show these fellows that it is really worth something and has \$100 of real value back of it." He moved that in this case we buy in the stock at par. We made the offer and it was accepted, and the man was very much pleased.

We continued year after year. The percentages added to preferred dividends and to employees' wages during the first eight years ran

like this: January, 1900, 60; 1901, 82; 1902, 74; 1903, 98; 1904, 69; 1905, 28; 1906, 81; 1907, 120.

It was soon apparent that there would be stock continually coming on the market. The men organized themselves and tried to buy it as fast as it was offered. They wished to keep hold of it, and they wished to maintain the price at par. At first they were successful, but it soon came faster than they could take care of it and the price declined. It went down and down until it struck a level of about \$65 a share.

The stock that was sold went largely into outside hands; and during this interval several of the preferred stockholders (original stockholders) died, and their stock went into the hands of their heirs. These outside stockholders and heirs began to feel that they wanted a larger share in the profits, and they set about to get it. Their plan was to get the employees to vote down profit-sharing. They told the employees that if they would stop sharing profits, the stock would return to par. They also offered as an inducement a 20 per cent increase in wages and higher dividends. They failed, and profit-sharing continued.

But by this time we had plenty of capital, and there was a profit in the purchase of stock below par, so we decided to change our policy in regard to buying stock. Up to this time there had been no restrictions on the stock. Employees could sell to whomever they saw fit. Since the change in our by-laws in 1909 the stock has been issued only on the condition that it be left on deposit with the Company under contract to sell to the Company at the market price whenever the shareholders wish, and whenever we have sufficient funds in our stock-purchase fund. The Company has the privilege of buying the stock when the owner goes to work for a competitor, when he goes into business for himself, or when he has worked for another for five years. If he remains with the Company until he retires, the Company cannot buy the stock without the owner's consent.

The market price of stock is determined by averaging the price of the last hundred shares sold. One of the principal elements determining the market price of stock is the sale of what we call "stub shares." The amount of stock apportioned to honorary employees cannot be measured in full shares of \$100 each. There are fractional amounts left over; these stubs are combined into whole shares

and sold at the annual meeting. Each owner of a stub is entitled to bid for these shares; the man who bids the highest gets the share or shares he bids for at the price bid, and so on until all the shares are sold.

At first the stock was nearly all bought by preferred stockholders or by some of the better-paid employees, and it usually went about \$65 a share, but as time went on, it increased in value until at the last annual meeting it sold for a little over \$80 a share, and at this time it went into many hands. There were only three men who succeeded in getting more than one share.

We used to give 15 per cent in cash and 85 per cent in stock. We now give only 10 per cent in cash and 90 per cent in stock. What we used to call profit-sharing we now call remaining wage and extra preferred dividends. During recent years we have had the following results: January, 1908, 100 per cent; 1909, 78; 1910, 100; 1911, 100; 1912, 47; 1913, 75; 1914, 70; 1915, 90; 1916, 50; 1917, 70; 1918, 100. And this January again another 100 per cent. The average of all these figures is 80 per cent; that is, we have added to preferred-stock dividends during the twenty years 80 per cent annually, and we have added to our employees' basing wage 80 per cent annually. . . .

Some of you may wonder why it is that we could do this, and I will admit that when I say the average percentage has been 80 per cent, it is somewhat misleading. Not all of our employees receive this remaining wage each year, only those who have become honorary employees; that is, worked 4500 hours. If we had divided the same amounts among all of our employees, it would have resulted in about 64 per cent average in place of 80 per cent; and we do not figure these percentages in every case on our employees' actual wages. We do with the office employees and dayworkers, but not with pieceworkers. In their case we base it on the wages they would have received had they worked daywork instead of piecework. At piecework they usually earn about 25 per cent more than they do at daywork. Had we divided with our pieceworkers on their actual wages, it would have cut the percentage from 64 to about 55 per cent.

Again, if we had gone out in the open market for our capital, we would have had to pay 6 to 7 per cent for it, whereas we only pay 5 per cent on our common stock.

Then, there has been a profit in the purchase of our stock at less than par from the people who have left our employ. We have been purchasing it at the market, which has varied all the way from 65 to 80 per cent of par.

Taking all these things into consideration, it probably would have reduced the average percentage to about 45 or 50 per cent. That is to say, had the division been with all our employees and on their whole weekly wages, and had we paid 7 per cent for all our capital and bought no stock at less than par, our average percentage would have been about 45 or 50 per cent. Where has it come from?

Some may perhaps think we have not done the fair thing by our preferred stockholders, or that we have perhaps paid a small weekly wage in order that we might pay a large remaining wage at the end of the year. Let us see what we have done for our preferred stock. I can remember, on several occasions before we went into this, some of the original stockholders wanted to sell, but they couldn't find a buyer. There was really no market for their stock, and when we first started there was only \$100 of property back of each share of preferred; but as time has gone on this amount has increased, and today there is between \$700 and \$800 to earn the dividend on each share of preferred. It is to some extent invested in bonds, and the income on these bonds alone is sufficient to pay the preferred-stock dividend two or three times over. So we have increased the security of preferred stock enormously. The Company has a standing offer to buy preferred stock at \$140 a share, and besides this we have paid preferred for the past twenty years an average annual dividend of 9 per cent. Roughly, 6 per cent of this 9 per cent has been paid in cash, the rest in common stock.

Then, as to what we have done with labor. I have investigated on numerous occasions to find out whether we were paying competitive wages. I will mention but two things. The United States Department of Commerce and Labor published a bulletin, No. 57, applying to the year 1905. In that bulletin they stated that the average wage for windmill manufacturers for the year was \$503. The average of the Baker employees for the year was \$561. The output of the windmill manufacturers of the nation was \$2486 per employee. The output for our employees was \$3400. Bulletin No. 75, applying to the same year, stated that the agricultural-implement concerns on the average paid \$539, and the average output per man was \$2347.

Now, where does it come from? It is my belief that this is largely the result of increased production due to increased effort and intelligence of our men, and that if you destroy this remaining-wage scheme this production would not continue.

I believe the overhead per man is less where the men have an incentive such as we have offered. To illustrate: Suppose a barber running one chair has an income of \$8 per day, and his expenses are \$4. He has made for himself \$4. And supposing he should decide that he is going to put forth every effort and increases his output 10 per cent. The income would then be \$8.80, the expenses would remain the same, and he would have \$4.80 for himself. Or with a 10 per cent increase in output, he has made 20 per cent increase in earnings. You have heard it said that a rented house needs more repairs and depreciates faster than a house in which the owner lives. I can remember that my mother used to say that a hired girl would often prove practically worthless and be inattentive and let her work go, but as a rule the same woman after she married and had a house of her own would be a good housekeeper and become thrifty.

We had an experience which I wish to relate. Some eighteen years ago we wished a galvanizing plant. We contracted with an expert galvanizer to come to our plant and do our galvanizing on a ton basis. The contract was drawn up in such a way that we were to know his cost, and at the end of four years it was our privilege to buy him out. We did, but kept his men, giving them the same wages that he had paid them, but we told them that if they would make the cost of galvanizing less than it had been, we would share liberally with them. And they did; they made the cost less under those conditions than they had when one man, the foreman, got all the benefit of the increased production. . . .

These remaining wages separate us from some good men, but this would be natural, for every man wants to be his own boss. It furnishes them with capital with which to go into business, and we have had a number of valuable men leave us, whereas if they had not had the capital they could not have left us. Quite a number of men have sold their stock to make their first payments on farms. Three or four years ago I was up in the Lake Superior country, and between trains my wife and I stopped off at Chetek to see an old schoolmate of hers,



who lived in the country. On the way the schoolmate pointed out five different farmers who had got their start from the sale of our stock.

Our turnover for a number of years prior to 1917 averaged 24 per cent; for the year 1917, 50 per cent; for the year 1918 it was 60 per cent. We carry our own employees' liability insurance. It has averaged for seven years past 25 cents per \$100 pay roll. Forty per cent of our employees own their own homes; 28 per cent own automobiles; more than half our capital is owned by our employees. I think that capital should be in the hands of those persons who will make it serve the people best; that is, who will make it do the greatest good to the greatest number. Our capital is going into the hands of those persons who have served the longest and held the most important positions, and I trust they will handle it more wisely than would parties who were not so familiar with the business nor so vitally interested in it.

Coöperative societies are often a side issue, the owners' livelihood is not gained through them; to a large extent they are everybody's business. With us coöperation is our principal business, our bread and butter. Whatever we can save or produce more than workmen usually produce is ours.

Our board of directors is composed of our foundry foreman, windmill-machine-shop foreman, superintendent, buyer, cost accountant, and myself. On the afternoon of the annual meeting we close the shop and hire the city hall for the meeting; most of the employees attend and are interested in knowing the Company's business affairs. It seems to me that this is much better than to have the capital owned almost wholly in Chicago or New York, financial matters largely a secret from the employees and neither capital nor labor really knowing the other fellow's side. If you separate capital too completely from labor, the conditions become unstable.

I believe that if, in ordinary times, any corporation will get the good will of its employees and tell them that the stockholders in the future will be paid the average amount the stock has earned (say for the past five years), and any amount which the Company earns in addition to this will be divided among the employees, the amount which will be coming to the employees will be surprising.

JOHN S. BAKER

PRESIDENT, EVANSVILLE, WISCONSIN

## XXI

### A PLAN FOR COLLECTIVE BARGAINING AND COÖPERATIVE WELFARE<sup>1</sup>

#### A GLANCE BACKWARD

AT THE close of the year 1910 the former management of the Philadelphia Rapid Transit Company found itself bankrupt in cash. It had also lost the confidence of its employees and of the public.

The \$30,000,000 paid in by the stockholders in payment of their stock had been spent, together with all other money which the management could secure by mortgage and other means.

In 1909 and 1910 the earnings had not been sufficient to pay the operating costs, rentals, and interest by over \$1,500,000—to say nothing of earning a return on the \$30,000,000 paid in by the stockholders, who had then gone nearly eight years without receiving any return upon their money.

Nearly three fourths of the cars in service were of the old four-wheel type, together with the rebuilt horse cars (known as "cuts"). There was little protection and no comfort while riding on these cars, either for the men or the public.

Accidents had increased to an alarming extent, caused by unfit equipment and the general unrest of the men, who, after experiencing two serious strikes in 1909 and 1910, were, in a dissatisfied way, working under the terms of a wage settlement provided as the result of arbitration.

The maximum wage of conductors and motormen in 1911 was 23 cents, and this maximum rate was to be increased one-half cent per hour on July 1 of each year until 1914, when the high rate for men over five years in service was to be 25 cents per hour.

In this emergency Mr. E. T. Stotesbury was petitioned by the stockholders to take charge of the management and save the

<sup>1</sup>Publication by Philadelphia Rapid Transit Company, 1918.

situation. Mr. Stotesbury undertook this thankless job, without pay, and engaged Mr. T. E. Mitten to represent him in the management of the property.

The public was made satisfied with promises, which have since been faithfully met.

The stockholders were told that they must still wait for any return upon their \$30,000,000 until both men and public had been accorded fair treatment.

The condition of the Company was explained to the men, and it was pointed out that it would be impossible for the Company to survive if it increased the proportion of its earnings then being paid to its conductors and motormen, which approximated 22 cents out of every dollar received by the Company in fares from passengers.

A promise was made by Mr. Mitten at this time, 1911, that if the men would coöperate under a plan by him set forth, 22 cents out of every dollar received by the Company in fares from passengers would be set aside in a fund to be used for payments to conductors and motormen. Mr. Mitten stated that, in this event, the maximum wage attained by the close of a five-year period, July, 1916, would, in his opinion, be not less than 28 cents per hour.

It was in August, 1911, that the Coöperative Plan was adopted by the Stotesbury management and accepted by vote of the men in November of the same year.

The Coöperative Plan has well stood the test of over seven years' vicissitudes. Through its agency mutually satisfactory working conditions have been established and maintained.

The public have had a continuity of service, as against the strike conditions previously prevailing, and over \$16,000,000 has been spent for new cars and other improvements. During the year ended June 30, 1918, 741,140,866 passengers were carried at an average fare of 3.96 cents per passenger as against 432,884,253 passengers carried at an average fare of 4.15 cents per passenger during the year ended June 30, 1910.

The men actually received 31 cents per hour at the close of the five-year period, 1916, as against the 28 cents originally estimated, and this was increased as of July 15, 1918, to 43 cents per hour as a result of the workings of the Coöperative Plan.

Prior to the recent raise to 48 cents per hour (to accord with the National War Labor Board Scale) the Coöperative Plan had produced an increase of 20 cents per hour in maximum pay, amounting to \$5,368,153.18 more in this period than the men would have received under a continuation of the strike-settlement scale. *This is the greatest increase of wages obtained in any American city during this period.*

Greater advantages in sick and death benefits were assured.

Improved working conditions and modern devices for controlling the mechanism of the cars were installed, to which the men responded by cutting the number of accidents in half.

The principle of the Coöperative Plan, as originally established, that is, that employees may belong to any union or other organization without "let or hindrance," has proved to be the rock of its dependence and the disarming of its opponents. Of the two attempted strikes, neither proved effective in causing serious interruption to service. The attempt in the present year was so timed as to take full advantage of the depleted force occasioned by the draft requirements of the government. It afforded the most striking demonstration of the effectiveness of coöperative effort between the Company and employees, in that the cars necessary to provide the extra service to war workers were at once manned and operated for several weeks by volunteers from all departments of the Company, so effectively that when called upon to answer the complaint made to the War Labor Board at Washington the management was able to prove by the representatives of the shipyards, arsenals, etc. that service had not been interrupted and was being adequately supplied. As a consequence the War Labor Board dismissed the complaint, following our voluntarily undertaking to adopt the wage scale then being established by the War Labor Board to govern the cities of Chicago, Cleveland, Detroit, and Buffalo, and our further undertaking to give the objecting employees opportunity of continuous employment during good behavior.

The investigation of the War Labor Board, and the cross-examination of those of us who appeared as representing the Coöperative Plan, brought out certain points in the plan there shown as capable of being misrepresented and misunderstood. This, together with the

abolition of the 22 per cent fund, the establishment of the War Labor Board basis for the new wage scale, and the apparent desirability of a broadening and enlargement of certain features of the plan, made necessary the preparation of an amended plan, which has been submitted to the employees, by means of United States mail, in such a way as to present the opportunity for examination and decision under influence of the home and counsel of the family.

The stockholders received a total of \$2,847,933.50 in dividends, and a 5 per cent dividend rate has been established. They have also a greatly improved condition of their property, including the equity of the undistributed surplus income accumulated under this management.

The Coöperative Plan has thus demonstrated what can be accomplished where both men and management strive together for one common purpose.

### A LOOK FORWARD

The Stotesbury-Mitten management, as a result of the past seven years' experience, now presents the following statement of policy and practice, which it is proposed shall hereafter cover the joint undertakings of the men and the management in the way of coöperative effort.

The principle of the Coöperative Plan of 1911, that is, that employees may belong to any union or other organization without "let or hindrance," is hereby ratified and confirmed; it being understood, however, that in the interest of service to the public the rules of the Company must be obeyed.

Satisfactory service insures continuous employment with the Company. In the event of there being such a decrease in the business of the Company as makes it necessary to reduce the force, those giving the least satisfactory service shall be the first to be dropped from the pay roll of the Company.

There shall be no discrimination against employees who, for any reason, do not become members of the Coöperative Welfare Association.

Coöperative effort is recognized as the keystone of all accomplishment in rendering proper service to the public, and good service will be recognized by such advancement as opportunity offers.

## WAGES

The War Labor Board, in its wisdom, determined upon an advanced wage for employees of street railways. This management, in agreement with the Coöperative Committee, advanced the wages of its trainmen another 5 cents, to a maximum of 48 cents per hour, and has adjusted the wages of its other employees accordingly. This at once brings all employees upon a proper comparative basis and, by averaging the wage scales of the other cities of the first class under the jurisdiction of the War Labor Board, namely, Chicago, Cleveland, Detroit, and Buffalo, gives us a permanent basis upon which to adjust the wages of the employees in each of the departments from time to time as occasion may warrant.

This new basis makes unnecessary the longer continuance of the 22 per cent fund and opens the way to a broadening of the Coöperative Plan to include all employees of the Company upon equally favorable terms.

The original Coöperative Plan, covering the payment of sick benefits, now provides insufficiently in amount and imperfectly in time and method of payment. The first plan of death benefits and of pensions became inadequate and subject to much improvement.

Therefore, we must now devote our energies to enlarging the scope of the Coöperative Welfare to include all employees one year in service, and to increase and improve sick benefits, death benefits, and pensions.

The government has been good to us in various ways. The War Labor Board has dismissed the complaint of those who were desirous of destroying our efficiency. The Emergency Fleet Corporation and the Bureau of Industrial Housing and Transportation have advanced us millions of dollars with which to buy new cars and other equipment.

The stockholders have permitted us to increase wages of trainmen more than \$5,000,000 over the amount which the men would have received under the 1910 strike-settlement scale. The stockholders themselves have received less than \$3,600,000 during the seven years, as a return upon their \$30,000,000 of invested capital, and have now again let us advance wages to meet the needs of the men, and this without knowing where the money is coming from.

The bounden duty of the men and the management under these circumstances is to do their level best to cut out all wasted effort. Man power and fuel can be thereby saved. By helping the government to conserve these most essential things we will not only be doing our patriotic duty but in addition will be doing all in our power to hold down our rates of fare to the lowest possible point consistent with the following :

1. Efficient service to the public.
2. Payment of adequate wages.
3. Proper protection of invested capital.

#### COMPENSATION FOR INJURIES

The Company will continue to pay the compensation as determined under the Workmen's Compensation Act for injury to employees resulting in :

1. Total temporary disability.
2. Partial (permanent or temporary) disability.
3. Limited number of serious dismemberments.
4. Total permanent injuries.
5. Fatal injuries.

The period and amount of compensation are determined under this act in accordance with the disability sustained.

#### AMENDED PLAN

The Coöperative Plan of 1911, redrawn to meet the changed conditions, follows and will be known as the Coöperative Plan of 1918.

#### COLLECTIVE BARGAINING

##### VOICE AND VOTE

1. The workers shall have a free and independent vote for representatives for proper collective bargaining, and
2. Proper committee organization of such representatives, so that class and group contact may be assured and the integrity of workers' committees be established and maintained as such.

##### PROCEDURE

The business of Employer is divided into classes, or departments, and each department is subdivided into contact groups, or Branches.

Differences between Employee and Employer shall be settled through the medium of

1. Branch Committees.
2. Department Committees.
3. General Committees.
4. Board of Arbitration.

Any local point of difference shall be taken up by the Branch Committee at the local Branch of origin.

When a grievance is not settled through the proper Branch Committees, then it shall be taken up by the respective Department Committees.

When a grievance is not settled through the proper Department Committees, then it shall be taken up by the General Committees.

When a grievance cannot be settled through the General Committees, it shall then be settled by arbitration.

All appeals shall be submitted in written form to the secretary of the respective committees, briefly setting forth all the facts of the matter at issue.

In the discussions of the Department Committees and of the General Committees it is intended that Employees shall sit on one side of the table, so to speak, and Employer on the other side, throughout the collective bargaining contemplated by this plan.

The majority of any Committee of Employees shall be the voice of that committee.

The majority of any Committee of Employer shall be the voice of that committee.

Whenever the minds of the majorities of any committees meet, the controversy shall be settled.

While it is intended that there shall be full and free discussion in order to arrive at an amicable understanding and settlement of controversies, whenever it is necessary to take a vote to ascertain the voice of any committee, the committees for the employees and for the employer shall have the right to retire and cast their vote in secret caucus. In such secret caucus all such votes shall be taken by secret ballot, said ballots to be returned unopened to the secretary for the committees. The secretary shall count the ballots under the observation of both committees and announce the result in open meeting.



## BRANCH COMMITTEES

There shall be elected two representatives by the workers at each depot, station, or division. The candidate receiving the highest vote shall be declared No. 1 Branch Committeeman for that depot, station, or division for the ensuing year, and the candidate receiving the second highest vote, in like manner, shall be declared No. 2 Branch Committeeman.

The employer shall appoint two representatives for each depot, station, or division.

The two Committeemen elected by the workers shall constitute the Branch Committee for Employees.

The two representatives appointed by the Company shall constitute the Branch Committee for Employer.

Committeemen shall be elected to serve for the period of one year. It shall be their duty well and truly to represent their fellow employees and to give all matters under consideration or discussion their best thought and the benefit of their knowledge and experience.

At least once in every three months there shall be an opportunity for a meeting of workers at each Branch, when reports shall be made by the local Branch Committeemen.

*Elections*

The dates upon which Committeemen elections shall be held, as well as the hours during which the polls will be open, shall be so arranged as to insure to every qualified voter at the local depot, station, or division opportunity to cast a vote for one candidate, it being stipulated that the different election dates shall be arranged in such order and sequence as to provide always for a working majority on the several committees of members who are familiar with the nature and routine of the business transacted.

Notice of any Branch election shall be posted conspicuously at the said local Branch twenty-one days in advance of the date set for the election.

All elections for Committeemen shall be by secret Australian ballot under the supervision and direction of an Election Committee of three members chosen by and from the respective Department Committee for Employees.

All ballots cast, together with the official return of the Election Committee, shall be forwarded promptly to the Secretary of the Department Committee, to become a part of the permanent records.

In case of decease, leaving service, or inability to act of any Branch Committeeman, the remaining Committeeman shall act until a successor is elected. An election shall be held to fill the vacancy as promptly as possible in the same manner as the original choosing provided by this plan.

### *Qualifications for Voters*

To qualify as a voter the employee must have been six months in the Company's service, be regularly assigned to duty, and not occupy an official position of any character with the Company. Every voter shall be entitled to all the rights and privileges under this plan.

No voter shall be permitted to cast a ballot unless he or she shall appear at the polls in person and within the hours prescribed for the election.

Lists containing the names of the workers qualified to vote at the election shall be posted conspicuously at the local Branch three days prior to the date set for the election.

### *Qualifications for Committeemen*

Candidates, to be eligible to election as Committeemen, must be regularly assigned to duty and have been continuously in the employ of the Company for not less than two years.

In the Transportation Department candidates must also be assigned to a regular run and be actually serving in the capacity of trainman or its equivalent grade.

Candidates for election as Committeemen must file with the secretary of the General Committees, not less than thirteen days in advance of the date of election, official nomination papers, carrying the signatures of not less than seven workers qualified to vote at the respective Branch location.

It is not intended that a worker shall sign more than one nomination petition at any election.

It is not intended that any employee who may properly be said to represent Employer shall be chosen as a representative of workers.

## DEPARTMENT COMMITTEES

Employees in the several Departments shall be represented on their respective Department Committees through their duly elected members.

The following Departments will each be represented by its respective Department Committee, namely :

Transportation Department.

Rolling-Stock and Buildings Department.

Electrical Department.

Way Department.

General Offices Department.

These Committeemen elected annually by the employees of each Department shall be equaled in number by the Company appointments of its representatives. Each Committeeman shall be entitled to a vote.

Each Department Committee for Employees shall consist of all No. 1 Branch Committeemen and all No. 2 Branch Committeemen elected by the workers at the several depots, stations, or divisions in that Department. In the event of decease, leaving service, or inability to act of either Branch Committeeman, then the remaining Branch Committeeman for that Branch shall act on the Department Committee until a successor is elected in the manner hereinbefore provided for filling a vacancy on a Branch Committee.

*Officers*

The Department Committee for Employees and the Department Committee for Employer shall each elect its respective chairman.

The secretary for the General Committees, or an authorized representative, shall act as secretary for the several Department Committees, without vote.

*Meetings*

Stated meetings of each Department Committee shall be held in alternate months throughout the year. Special meetings shall be held at the call of the secretary or upon the request of five members submitted in writing to the secretary.

No less than two thirds of the members of any Department Committee shall constitute a quorum for the transaction of business at any regular or special meeting of that committee.

#### GENERAL COMMITTEES

The members of each Department Committee for Employees shall annually elect two of their number, the members so elected to constitute the General Committee for Employees.

The members of the General Committee for Employees shall be equaled in number by the Company's representatives, to be appointed by the president of the Company, the members so appointed to constitute the General Committee for Employer.

A vacancy occurring in the General Committees shall be filled as promptly as possible in the manner of the original choosing.

It shall be the duty of the General Committees to devise ways and means for furthering the efforts of the various Department Committees for the greatest possible good, to promote harmony and good fellowship among all employees of the Company, to formulate plans for submission to the several Department Committees, and to render every assistance within their power toward advancement of the interests of the employees and the betterment of the service.

Further, the General Committees shall possess the power to review, modify, or reverse any findings or decision of the Department Committees, and may, in their judgment, change any portion of this plan or any modification thereof or the composition of any of the committees, or any of their various respective functions.

The scope and authority of the General Committees shall be superior to that of the Department Committees, and their decisions in all matters shall be final and binding, except as hereinafter provided.

#### *Officers*

The General Committee for Employees and the General Committee for Employer shall each elect its respective chairman. The secretary for the General Committees shall be appointed by the president of the Company, and shall not be entitled to vote. It shall be the duty of the secretary to keep accurate minutes of meetings of all

committees. For this purpose an assistant secretary shall be employed to assist in keeping the minutes and conducting the details of the several committees.

### *Meetings*

Stated meetings of the General Committees shall be held on the third Tuesday of each month.

Special meetings shall be held at the request of the chairman of either of the General Committees, submitted in writing to the secretary.

No less than two thirds of the members of each General Committee shall constitute a quorum for the transaction of business at any regular or special meeting.

### BOARD OF ARBITRATION

If resort to arbitration becomes necessary, then there shall be an arbitrator chosen by the General Committee for Employees and an arbitrator chosen by the General Committee for Employer, the two arbitrators so chosen to select a third arbitrator. Failing unanimous decision, the decision of any two of these arbitrators shall be binding.

In the event that the arbitrator chosen by the General Committee for Employees and the arbitrator chosen by the General Committee for Employer are unable to agree upon a third arbitrator, then the provost of the University of Pennsylvania, the chairman of the Public-Service Commission, and the president of the Chamber of Commerce shall be requested to serve as additional arbitrators, or, failing so to do, to appoint their own personal representatives to act as such additional arbitrators. Failing unanimous decision, the decision of any three of these five arbitrators shall be binding.

### *Compensation*

The pay of members of the General Committee for Employees and of all Department Committees for Employees while employed on committee work shall be paid from the funds of the Coöperative Welfare Association and shall be at the rate received by the respective employees at their regular occupations, and while so employed they shall receive no pay from the Company.

The members of the General Committee for Employer and of all Department Committees for Employer shall receive no compensation from the Association for their services as Committeemen, but shall receive from the Company the continuation of their regular pay as Company employees.

Each arbitrator shall be paid from the funds of the Coöperative Welfare Association, as compensation for his services, an amount to be determined by the General Committees.

All expenses of any character incident to the carrying out of the Coöperative Plan shall be paid, out of the funds of the Coöperative Welfare Association—the same being represented in the amount of the dues as paid in from time to time by the members of the Coöperative Welfare Association and in the sum of \$10,000 per month paid in by the Company.

## COÖPERATIVE WELFARE

### MEMBERSHIP

Membership in the Coöperative Welfare Association is open to employees one year or over in service and over sixteen years of age, without initiation fee; \$1 per month will be deducted from the pay of each member, and said dues will entitle members to life insurance, sick benefits and pensions, as herein provided.

The Company during the period of this management has paid into the various funds representing sick benefits, pensions, death benefits, and other benefactions, at the rate of approximately \$90,000 per annum. Under the Coöperative Plan of 1918 the Company will contribute a lump sum of \$10,000 per month to the cost of carrying out the conditions contained therein.

Should the income realized by the payment of \$1 per month by members and \$10,000 per month by the Company be found insufficient to meet the expenditures of the Association, the dues of members shall be increased sufficiently to prevent a deficit in the funds of the Association, and no increase in the amount paid by the Company shall be made until the total amount paid monthly by the members equals the \$10,000 paid monthly by the Company. Thereafter all increases shall be borne equally by both. The Company, however,

will not reduce its minimum payment of \$10,000 per month should the present dues of \$1 per month create a surplus in the funds of the Association.

### LIFE INSURANCE

A blanket policy has been issued by the Metropolitan Life Insurance Company, insuring the lives of employees of the Company desiring to avail themselves of this protection through the medium of the Coöperative Welfare Association.

Certificates of Insurance providing for \$1000 life insurance have been delivered into the possession of each member of the Association, to remain in full force and effect so long as the member continues in the employ of the Company and retains membership in the Coöperative Welfare Association.

This replaces the death benefit of \$150 formerly paid under the Coöperative Plan of 1911, to which the members contributed 25 cents per month, and also replaces the \$500 given by the Company to dependents of deceased employees who had been over two years in its service.

The Metropolitan Life Insurance Company makes payment of benefits and insurance under its policy direct to the beneficiaries of the members of the Coöperative Welfare Association.

Each Certificate of Insurance for \$1000 issued by the Metropolitan Life Insurance Company, under the provisions of the blanket policy, entitles the holder, upon leaving the employ of the Company, to re-insure for the same amount with the Insurance Company without medical examination, at rates based upon the member's then attained age. Any such member subsequently returning to the employ will again become eligible for reinsurance under the provisions of this blanket policy.

A special feature of this Certificate of Insurance is a provision that in case of total and permanent disability, occurring before the member shall have attained sixty years of age, from causes arising after the issuance of insurance, the insured will be entitled to receive from the Insurance Company the \$1000 covered by the policy in monthly or yearly installments, as set forth in the Certificate of Insurance for \$1000 now in the possession of each member of the Association.

## SICK BENEFITS

Sick benefits are payable at the rate of \$1.50 per day, commencing with the eighth day's illness, for a period not to exceed one hundred days in any consecutive twelve months.

This replaces the former sick relief of \$1 per day for one hundred days in any consecutive twelve months.

## PENSIONS

Pensions of \$40 per month are payable to incapacitated employees who have reached sixty-five years of age and have been continuously in the service for twenty-five years; meritorious cases of long service, but falling short of these requirements, to be given special consideration,

This increases the former pension plan from \$20 to \$40 per month.

## ADMINISTRATION

The affairs of the Coöperative Welfare Association shall be administered by a Coöperative Council consisting of the combined membership of the two General Committees for collective bargaining. The administration of the Coöperative Welfare Association shall be entirely separate and distinct from the function of collective bargaining.

The Coöperative Council shall act as Trustees of Insurance for the Coöperative Welfare Association and shall also authorize the expenditure of all moneys, including payment of sick benefits.

The Coöperative Council shall also pass upon the issuance of Insurance Certificates and the validity and merit of all applicants for pensions.

The president of the Coöperative Welfare Association, who shall also act as chairman of the Coöperative Council, shall be elected annually from the membership of the Association by the majority vote of all the members of the several Department Committees for Employees.

The chairman of the Board of Directors and the president of the Company shall be the honorary chairmen of the Coöperative Council.



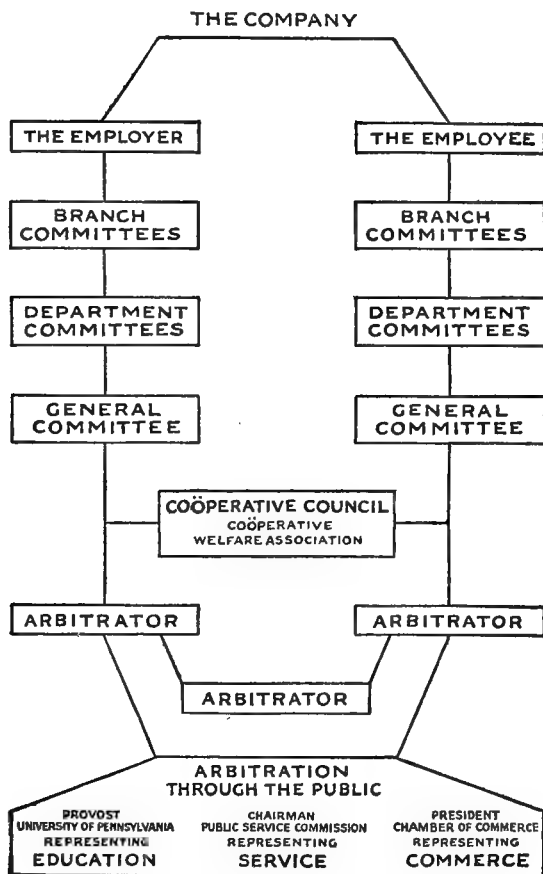


CHART SHOWING ORGANIZATION

The secretary-treasurer of the Coöperative Council and the assistant secretary-treasurer shall be appointed by the president of the Company. The Association shall employ such other assistants as may be required.

The Company's Auditing and Treasury Departments are to be placed at the disposal of the Coöperative Council for the purpose of keeping the accounts and safeguarding the funds of the Coöperative Welfare Association.

## COÖPERATIVE PLAN ADOPTED

On August 19, 1918, a personal letter signed by President Mitten and approved by Mr. Stotesbury was mailed to each employee of the Company, together with a booklet containing the provisions of the amended Coöperative Plan (which included life insurance, sick benefits, pensions, wages, and representation through the duly elected committees), as well as a card whereon employees so desiring were invited to express their approval of the same.

The response of the employees was prompt and general and showed such an overwhelming majority in favor of the amended plan as to insure its immediate success. A second letter was therefore mailed on August 27 to all eligible employees, one year in the service, inclosing an official application card for membership in the Association which provided for certain information required by the Insurance Company not contained in the original card.

The letter explained that a contract had been entered into with the Metropolitan Life Insurance Company insuring for \$1000 the lives of all who became members of the Association, and also described the various conditions governing the issuance of the Certificates of Insurance.

A further letter was sent to all eligible employees on September 6, setting forth that under the terms of the contract with the Metropolitan Life Insurance Company the insurance on employees who mailed their application cards before midnight September 15 would become effective when the card was mailed; that insurance on employees who mailed their application cards after midnight September 15 and up to midnight September 30 would become effective when the Certificate was issued, and that any eligible employee who failed to mail his application card before midnight September 30 would not be insurable unless able to perform the duties of his or her position.

All of these communications were mailed to the homes of the employees, so that they could be carefully considered by the employees and the members of their families.

At December 1, 1918, there were 9073 employees eligible for membership in the new Coöperative Welfare Association, of which number the applications of 8399, or over 92 per cent are on file. The

deaths, owing to the ravages of the epidemic influenza, have been unusually large, and this, together with the withdrawals from service, have reduced the total by 267, leaving a net membership, as of December 1, of 8132.

The applications for continued membership very generally bear the indorsement of the wife, who, in most instances, is named as the beneficiary. The following statement of beneficiaries named in the Certificates of Insurance as being entitled to receive the \$1000 death benefit is of interest:

	TOTAL NUMBER	PER CENT OF TOTAL
Wife and Children . . . . .	6459	80%
Parents . . . . .	861	10
Other Relatives . . . . .	588	7
Estate, etc. . . . .	<u>224</u>	<u>3</u>
Total . . . . .	8132	100

Following the overwhelming indorsement of the plan by the employees of the Company, as evidenced by their applications for membership in the new Coöperative Welfare Association, the General Committee, through its chairman and secretary, on October 21, 1918, mailed to all employees a letter outlining the progress of the welfare work and declaring the Coöperative Plan of 1918 operative and in full effect as of that date.

## XXII

### WORKSHOP COMMITTEES<sup>1</sup>

SOME time ago I was asked to prepare a memorandum on the subject of workshop committees, for presentation to the British Association, as a part of the report of a special subcommittee studying industrial unrest. The following pages contain the gist of that memorandum and are now issued in this form for the benefit of some of those interested in the problem who may not see the original report.

I have approached the subject with the conviction that the worker's desire for more scope in his working life can best be satisfied by giving him some share in the directing of it ; if not of the work itself, at least of the conditions under which it is carried out. I have tried, therefore, to work out in some detail the part which organizations of workers might play in works administration. And believing as I do that the existing industrial system, with all its faults and injustices, must still form the basis of any future system, I am concerned to show that a considerable development of joint action between management and workers is possible, even under present conditions.

Many of the ideas put forward are already incorporated to a greater or lesser degree in the institutions of these works, but these notes are not intended, primarily, as an account of our experiments, still less as a forecast of the future plans of this firm. Our own experience and hopes do, however, form the basis of much here written, and have inevitably influenced the general line of thought followed.

### INTRODUCTION

Throughout the following notes it is assumed that the need is realized for a new orientation of ideas with regard to industrial management. It is further assumed that the trend of such ideas must be in the direction of a devolution of some of the functions and

<sup>1</sup>*Survey*, Vol. XLI, 1918, Reconstruction Series No. 1.

responsibilities of management onto the workers themselves. These notes, therefore, are concerned mainly with considering how far this devolution can be carried under present conditions and the necessary machinery for enabling it to operate.

Before passing, however, to detailed schemes it is worth considering briefly what the aims of this devolution are.

It must be admitted that the conditions of industrial life fail to satisfy the deeper needs of the workers, and that it is this failure, even more than low wages, which is responsible for much of their general unrest. Now the satisfaction to be derived from work depends upon its being a means of self-expression. This again depends on the power of control exercised by the individual over the materials and processes used and the conditions under which the work is carried out, or in the case of complicated operations (where the individual can hardly be other than a "cog in the machine") on the willingness, understanding, and imagination with which he undertakes such a rôle. In the past the movement in industry in this respect has been all in the wrong direction; namely, a continual reduction of freedom, initiative, and interest, involving an accentuation of the "cog-in-the-machine" status. Moreover, it has too often produced a "cog" blind and unwilling, with no perspective or understanding of the part it plays in the general mechanism of production or even in any one particular series of operations.

Each successive step in the splitting up and specializing of operations has been taken with a view to promoting efficiency of production, and there can be no doubt that efficiency, in a material sense, has been achieved thereby and the productivity of industry greatly increased. This has been done, however, at the cost of pleasure and interest in work, and the problem now is how far these could be restored, as, for instance, by some devolution of management responsibility onto the workers, and how far such devolution is possible under the competitive capitalist system, which is likely to dominate industry for many long years to come.

Under the conditions of capitalist industry any scheme of devolution of management can only stand provided it involves no net loss of productive efficiency. It is believed, however, that even within these limits considerable progress in this direction is possible, doubtless involving some detail loss, but with more than compensating

gains in general efficiency. In this connection it must be remembered that the work of very many men, probably of most, is given more or less unwillingly, and even should the introduction of more democratic methods of business management entail a certain amount of loss of mechanical efficiency, due to the greater cumbersomeness of democratic proceedings, if it can succeed in obtaining more willing work and coöperation, the net gain in productivity would be enormous.

Important and urgent as is this problem of rearranging the machinery of management to enable responsibility and power to be shared with the workers, another and preliminary step is even more pressing. This is the establishing of touch and understanding between employer and employed, between management and worker. Quite apart from the many real grievances under which workers in various trades are suffering at the present time, there is a vast amount of bad feeling, due to misunderstanding, on the part of each side, of the aims and motives of the other. Each party, believing the other to be always ready to play foul, finds in every move easy evidence to support its bitterest suspicions. The workers are irritated beyond measure by the inefficiency and blundering in organization and management which they detect on every side, and knowing nothing of business management cannot understand or make allowance for the enormous difficulties under which employers labor at the present time. Similarly, employers are too ignorant of trade-unions affairs to appreciate the problems which the present "lightning transformation" of industry present to those responsible for shaping trade-union policy; nor is the employer generally in close enough human touch to realize the effect of the long strain of war work and of the harassing restrictions of personal liberty.

More important, therefore, than any reconstruction of management machinery, more important even than the remedying of specific grievances, is the establishing of some degree of ordinary human touch and sympathy between management and men.

This also has an important bearing on any discussion with regard to developing machinery for joint action. It cannot be emphasized too strongly that the hopefulness of any such attempt lies not in the perfection of the machinery, nor even in the wideness of the powers of self-government granted to the workers, but in the degree to which touch and, if possible, friendliness can be established. It

should be realized, for instance, by employers that time spent on discussing and ventilating alleged grievances which turn out to be no grievances may be quite as productive of understanding and good feeling as the removal of real grievances.

Passing now to constructive proposals for devolution of management, the subject is here dealt with mainly in two stages.

Under Section I some of the functions of management which most concern the workers are considered with a view to seeing how far the autocratic (or bureaucratic) secrecy and exclusiveness which usually surround business management, as far as workers are concerned, is really unavoidable or how far it could be replaced by democratic discussion and joint action. The conclusion is that there is no reason inherent in the nature of the questions themselves why this cannot be done to a very considerable extent.

Section II deals with the second stage referred to and considers the machinery needed to make such joint action as is suggested in Section I workable—a very different matter from admitting that in itself it is not impossible! The apparent complication of such machinery is doubtless a difficulty, but it is not insuperable and is in practice less formidable than it seems at first sight. It must be realized, however, that the degree of elaboration of the machinery for joint working adopted by any particular industry or firm must be in relation to the elaboration of the existing management system. It would be quite impossible for many of the refinements of discussion and joint action suggested to be adopted by a firm whose ordinary business organization was crude, undeveloped, and unsystematic. This point is more fully dealt with in this section.

Section III contains a summary of the scheme of committees contained in Section II, showing the distribution to each committee of the various questions discussed in Section I.

#### SECTION I. SCOPE OF WORKERS' SHOP ORGANIZATIONS; MANAGEMENT QUESTIONS WHICH COULD BE DEVOLVED, WHOLLY OR IN PART

It is proposed in this section to consider the activities which organizations of workers within the workshop might undertake without any radical reorganization of industry. What functions and powers, usually exercised by the management, could be devolved onto the

workers, and what questions, usually considered private by the management, could be made the subject of explanation and consultation? The number of such questions, as set out in this section, may appear very formidable, and is possibly too great to be dealt with except by a very gradual process. No thought is given at this stage, however, to the machinery which would be necessary for achieving so much joint working, the subject being considered rather with a view to seeing how far, and in what directions, the inherent nature of the questions themselves would make it possible or advisable to break down the censorship and secrecy which surround business management.

In the list which follows, obviously not all questions are of equal urgency, those being most important which provide means of consultation and conciliation in regard to such matters as most frequently give rise to disputes; namely, wage and piece-rate questions and, to a lesser degree, workshop practices and customs. Any scheme of joint working should begin with these matters, the others being taken over as the machinery settles down and it is found practicable to do so. How far any particular business can go will depend on the circumstances of the trade and on the type of organization in operation.

Though machinery for conciliation in connection with existing troubles, such as those mentioned, must be the first care, some of the other matters suggested in this section—for example, safety and hygiene, shop amenities, etc.—should be dealt with at the earliest possible moment. Such subjects, being less controversial, offer an easier means of approach for establishing touch and understanding between managers and men.

The suggestions in this section are divided into two main groups, but this division is rather a matter of convenience than an indication of any vital difference in nature. The suggestions are arranged in order of urgency, those coming first where the case for establishing a workers' shop organization is so clear as to amount to a right, and passing gradually to those where the case is more and more questionable. The first group, therefore, contains all those items where the case is clearest and in connection with which the immediate benefits would fall to the workers. The second group contains the more questionable items, which lie beyond the region where the shoe actually pinches the worker. These questions are largely educational, and the



immediate benefit of action, considered as a business proposition, would accrue to the management through the greater understanding of management and business difficulties on the part of the workers.

#### QUESTIONS IN CONNECTION WITH WHICH SHOP ORGANIZATIONS WOULD PRIMARILY BENEFIT THE WORKERS

This group deals with those matters where the case for establishing shop organizations, to meet the need of the workers, is clearest.

1. *Collective bargaining.* There is a need for machinery for carrying this function of the trade-union into greater and more intimate workshop detail than is possible by any outside body. A workshop organization might supplement the ordinary trade-union activities in the following directions :

##### a. Wages

(NOTE. General standard rates would be fixed by negotiation with the trade-union for an entire district, not by committees of workers in individual works.)

To insure the application of standard rates to individuals, to see that they get the benefit of the trade-union agreements.

When a *scale* of wages, instead of a single rate, applies to a class of work (the exact figure varying according to the experience, length of service, etc., of the worker), to see that such scales are applied fairly.

To see that promises of advances (such as those made, for instance, at the time of engagement) are fulfilled.

To see that apprentices, on completing their time, are raised to the standard rate by the customary or agreed steps.

##### b. Piecework Rates

(It is assumed that the general method of rate-fixing—for example, the adoption of time study or other method—would be settled with the local trade-unions.)

To discuss with the management the detailed methods of rate-fixing, as applied either to individual jobs or to particular classes of work.

Where there is an agreed relation between time rates and piece rates as, for instance, in engineering to see that individual piece rates are so set as to yield the standard rate of earning.

To discuss with the management reduction of piece rates where these can be shown to yield higher earnings than the standard.

To investigate on behalf of the workers complaints as to inability to earn the standard rate. For this purpose all the data and calculations, both with regard to the original setting of the rate and with regard to time-bookings on a particular job, would have to be open for examination.

(NOTE. It is doubtful whether a shop committee, on account of its cumbersomeness, could ever handle detail, individual rates, except where the jobs dealt with are so large or so standardized as to make the number of rates to be set per week quite small. A better plan would be for a representative of the workers, preferably paid by them, to be attached to the rate-fixing department of a works, to check all calculations and to look after the workers' interests generally. He would report to a shop committee, whose discussions with the management would then be limited to questions of principle.)

- c. Watching the Application of Special Legislation, Awards, or Agreements; for example, Munitions-of-war act, dilution, leaving-certificates, etc. Recruiting, exemptions.

After-war arrangements, demobilization of war industries, restoration of trade-union conditions, etc.

- d. Total Hours of Work

To discuss any proposed change in the length of the standard week. This could only be done by the workers' committee of an individual firm, provided the change were *within* the standards fixed by agreement with the local union or those customary in the trade.

- e. New Processes or Change of Process

Where the management desire to introduce some process which will throw men out of employment, the whole position should be placed before a shop committee to let the necessity be understood and to allow it to discuss how the change may be brought about with the least hardship to individuals.

- f. Grades of Worker for Types of Machines

Due to the introduction of new types of machines, and to the splitting up of processes, with the simplification of manipulation sometimes entailed thereby, the question of the grade of worker to be employed on a given type of machine continually arises. Many such questions are so general as to be the subject of trade-union negotiation, but many more are quite local to particular firms. For either kind there should be a works committee within the works to deal with their application there.

2. *Grievances.* The quick ventilating of grievances and injustices to individuals or to classes of men is of the greatest importance in securing good feeling. The provision of means for voicing such complaints acts also as a check to petty tyranny and is a valuable help to the higher management in giving an insight into what is going on.

A shop committee provides a suitable channel in such cases as the following :

Alleged petty tyranny by foremen.

Hard cases arising out of too rigid application of rules, etc.

Alleged mistakes in wages or piecework payments.

Wrongful dismissal ; for example, for alleged disobedience, etc., etc.

In all cases of grievances or complaints it is most important that the body bringing them should be of sufficient weight and standing to speak its mind freely.

3. *General shop conditions and amenities.* On all those questions which affect the community life of the factory the fullest consultation is necessary and considerable self-government is possible.

The following indicate the kind of question :

a. Shop Rules

Restriction of smoking.

Tidiness, cleaning of machines, etc.

Use of lavatories and cloakrooms.

Provision, care, and type of overalls.

Time-booking arrangements.

Wage-paying arrangements, etc., etc.

b. Maintenance of Discipline

It should be possible to promote such a spirit in a works that not only could the workers have a say in the drawing up of shop rules, but the enforcing of them could also be largely in their hands. This would be particularly desirable with regard to

Enforcing good timekeeping.

Maintaining tidiness.

Use of lavatories and cloakrooms.

Promoting a high standard of general behavior, etc., etc.

c. Working Conditions

Meal hours, starting and stopping times.

Arrangements for holidays, etc.

Arrangement of shifts, night work, etc.

*d. Accidents and Sickness*

Safety appliances and practices.  
 Machine guards, etc.  
 Administration of first aid.  
 Rest-room arrangements.  
 Medical examination and advice.

*e. Dining Service*

Consultation *re* requirements.  
 Criticisms of and suggestions *re* service.  
 Control of discipline and behavior.  
 Seating arrangements, etc.

*f. Shop Comfort and Hygiene*

Suggestions *re* temperature, ventilation, washing accommodation, drying clothes, etc.  
 Provision of seats at work, where possible.  
 Drinking-water supply.

*g. Benevolent Work*

Shop collections for charities or hard cases among fellow workers.  
 Sick club, convalescent home, etc.  
 Saving societies.

4. *General social amenities.* A works tends to become a center of social activities having no direct connection with its work, for example :

Works picnics.  
 Games ; for example, cricket, football, etc.  
 Musical societies.  
 Etc., etc.

These should all be organized by committees of the workers and not by the management.

#### QUESTIONS ON WHICH JOINT DISCUSSION WOULD PRIMARILY BE OF ADVANTAGE TO THE MANAGEMENT

In this group are those questions with regard to which there is no demand put forward by the workers, but where discussion and explanation on the part of the management would be desirable and would tend to ease some of the difficulties of management. The institution of works committees would facilitate discussion and explanation in the following instances:

1. *Interpretation of management to workers.* In any case of new rules or new developments, or new workshop policy, there is always the greatest difficulty in getting the rank and file to understand what the management is "getting at." However well meaning the change may be as regards the workers, the mere fact that it is new and not understood is likely to lead to opposition. If the best use is made of committees of workers, such changes, new developments, etc. would have been discussed and explained to them, and it is not too much to expect that the members of such committees would eventually spread a more correct and sympathetic version of the management's intentions among their fellow workers than these could get in any other way.

2. *Education in shop processes and trade technic.* The knowledge of most workers is limited to the process with which they are concerned, and they would have a truer sense of industrial problems if they understood better the general technic of the industry in which they are concerned, and the relation of their particular process to others in the chain of manufacture from raw material to finished article.

It is possible that some of this education should be undertaken by technical schools, but their work in this respect can only be of a general nature, leaving still a field for detailed teaching which could only be undertaken in connection with an individual firm or a small group of similar firms. Such education might well begin with the members of the committee of workers, though if found feasible it should not stop there, but should be made general for the whole works. Any such scheme should be discussed and worked out in conjunction with a committee of workers, in order to obtain the best from it.

3. *Promotion.* It is open to question whether the filling of any given vacancy could profitably be discussed between the management and the workers.

In connection with such appointments as shop foremen, where the position is filled by promoting a workman or "leading hand," it would at least be advisable to announce the appointment to the workers' committee before making it generally known. It might perhaps be possible to explain why a particular choice had been made. This would be indicated fairly well by a statement of the qualities which the management deemed necessary for such a post, thereby

tending to head off some of the jealous disappointment always involved in such promotions; especially where the next in seniority is not taken.

It has of course been urged, generally by extremists, that workmen should choose their own foremen by election, but this is not considered practical politics at present, though it may become possible and desirable when workers have had more practice in the exercise of self-management to the limited degree here proposed.

One of the difficulties involved in any general discussion of promotions is the fact that there are so many parties concerned and all from a different point of view. For example, in the appointment of a foreman the workers are concerned as to how far the new man is sympathetic and helpful and inspiring to work for. The other foremen are concerned with how far he is their equal in education and technical attainments, social standing, length of service; that is, as to whether he would make a good colleague. The manager is concerned, among other qualities, with his energy, loyalty to the firm, and ability to maintain discipline. Each of these three parties is looking for three different sets of qualities, and it is not often that a candidate can be found to satisfy all. Whose views, then, should carry most weight—the men's, the other foremen's, or the manager's?

It is quite certain, however, that it is well worth while making some attempt to secure popular understanding and approval of appointments made, and a worker's committee offers the best opportunity for this.

It would be possible to discuss a vacancy occurring in any grade with all the others in that grade. For example, to discuss with all shop foremen the possible candidates to fill a vacancy among the foremen. This is probably better than no discussion at all, and the foremen might be expected, to some extent, to reflect the feeling among their men. Here, again, the establishing of any such scheme might well be discussed with the committee of workers.

4. *Education in general business questions.* This point is still more doubtful than the preceding. Employers continually complain that the workers do not understand the responsibilities and the risks which they, as employers, have to carry, and it would seem desirable, therefore, to take some steps to enable them to do so. In some directions this would be quite feasible; for example,

1. The reasons should be explained and discussed for the establishment of new works departments, or the reorganization of existing ones, the relation of the new arrangement to the general manufacturing policy being demonstrated.
2. Some kind of simplified works statistics might be laid before a committee of workers; for example,
  - Output.
  - Cost of new equipment installed.
  - Cost of tools used in given period.
  - Cost of raw material consumed.
  - Number employed.
  - Amount of bad work produced.
3. Reports of activities of other parts of the business might be laid before them.
  - (1) From the commercial side, showing the difficulties to be met, the general attitude of customers to the firm, etc.
  - (2) By the chief technical departments, design office, laboratory, etc., as to the general technical developments or difficulties that were being dealt with. Much of such work need not be kept secret and would tend to show the workers that other factors enter into the production of economic wealth besides manual labor.
4. Simple business reports, showing general trade prospects, might be presented. These are perhaps most difficult to give, in any intelligible form, without publishing matter which every management would object to showing. Still, the attempt would be well worth making and would show the workers how narrow is the margin between financial success and failure on which most manufacturing businesses work. Such statistics might, perhaps, be expressed not in actual amounts but as proportions of the wages bill for the same period.

## SECTION II. TYPES OF ORGANIZATION

Having dealt in the previous section with the kinds of questions which, judged simply by their nature, would admit of joint discussion or handling, it is now necessary to consider what changes are needed in the structure of business management to carry out such proposals. The development of the necessary machinery presents very considerable difficulties on account of the slowness of action and lack of executive precision which almost necessarily accompany democratic organization and which it is the express object of most business organizations to avoid.

The question of machinery for joint discussion and action is considered in this section in three aspects :

1. The requirements which such machinery must satisfy.
2. The influence of various industrial conditions on the type of machinery likely to be adopted in particular trades or works.
3. Some detailed suggestions of shop committees of varying scope.

#### REQUIREMENTS TO BE SATISFIED

1. *Keeping in touch with the trade-unions.* It is obvious that no works committee can be a substitute for the trade-union, and no attempt must be made by the employer to use it in this way. To allay any trade-union suspicion that this is the intention, and to insure that the shop committee links up with the trade-union organization, it would be advisable to see that the trade-union is represented in some fairly direct manner. This is specially important for any committee dealing with wages, piecework, and such other working conditions as are the usual subject of trade-union action.

In the other direction, it will be necessary for the trade-unionists to develop some means of working shop committees into their scheme of organization ; otherwise there will be the danger of a works committee, able to act more quickly through being on the spot, usurping the place of the local district committee of the trade-unions.

2. *Representation of all grades.* The desirability of having all grades of workers represented on works committees is obvious, but it is not always easy to carry out, owing to the complexity of the distribution of labor in most works. Thus, it is quite common for a single department, say in an engineering works, to contain several grades of workers, from skilled tradesmen to laborers, and possibly women. These grades will belong to different unions, and there may even be different, and perhaps competing, unions represented in the same grade. Many of the workers also will not be in any union at all.

3. *Touch with management.* As a large part of the aim of the whole development is to give the workers some sense of management problems and point of view, it is most desirable that meetings between works committees and management should be frequent and regular and not looked on merely as means of investigating grievances or deadlocks when they arise. The works committee must not be an accidental excrescence on the management structure, but must



be worked into it so as to become an integral part, with real and necessary functions.

4. *Rapidity of action.* Delays in negotiations between employers and labor are a constant source of irritation to the latter. Every effort should be made to reduce them. Where this is impossible, due to the complication of the questions involved, the works committee should be given enough information to convince it of this, and that the delay is not a deliberate attempt to shirk the issue.

On the other hand, the desire to attain rapidity of action should not lead to haphazard and "scratch" discussions or negotiations. These will only result in confusion, owing to the likelihood that some of those who ought to take part or be consulted over each question will be left out or have insufficient opportunity for weighing up the matter. The procedure for working with or through works committees must, therefore, be definite and constitutional, so that everyone knows how to get a grievance or suggestion put forward for consideration and everyone concerned will be sure of receiving due notice of the matter.

The procedure must not be so rigid, however, as to preclude emergency negotiations to deal with sudden crises.

#### INFLUENCE OF VARIOUS INDUSTRIAL CONDITIONS ON THE TYPE OF ORGANIZATION OF SHOP COMMITTEES

There is no one type of shop committee that will suit all conditions. Some industries can develop more easily in one direction and some in another, and in this subsection are pointed out some of the conditions which are likely to influence development.

1. *Type of labor.* The constitution of works committees, or the scheme of committees, which will suitably represent the workers of any particular factory will depend very largely on the extent to which different trades and different grades of workers are involved.

In the simplest kind of works, where only one trade or craft is carried out, the workers, even though of different degrees of skill, would probably all be eligible for the same trade-union. In such a case a purely trade-union organization, but based of course on works departments, would meet most of the requirements and would probably, in fact, be already in existence.

In many works, however, at least in the engineering industry, a number of different "trades" are carried on; for instance, turning, automatic-machine operating, blacksmithing, patternmaking, foundry work, etc. Many of these trades are represented by the same trade-union, though the interests of the various sections are often antagonistic; for example, in the case of turners and automatic-machine operators. Some of the other trades mentioned belong to different unions altogether. In addition to these "tradesmen" will be found semiskilled and unskilled laborers. For the most part these will belong to no union, though a few may belong to laboring unions which, however, have no special connection with the engineering unions. In addition to all these there may be women, whose position in relation to men's unions is still uncertain, and some of whose interests will certainly be opposed to those of some of the men.

The best way of representing all these different groups will depend on their relative proportion and distribution in any given works. Where women are employed in any considerable numbers it will probably be advisable for them to be represented independently of the men. For the rest it will probably be necessary to have at least two kinds of works committees: one representing trade-unionists as such, chosen for convenience by departments; the other representing simply works departments. The first would deal with wages and the type of question usually forming the subject of discussion between employers and trade-unions; the other would deal with all other workshop conditions. The first, being based on trade-unions, would automatically take account of distinctions between different trades and different grades, whereas the second would be dealing with those questions in which such distinctions do not matter very much.

2. *Stability and regularity of employment.* Where work is of an irregular or seasonal nature and workers are constantly being taken on and turned off, only the very simplest kind of committee of workers would be possible. In such industries probably nothing but a trade-union organization within the works would be possible. This would draw its strength from the existence of the trade-union outside, which would, of course, be largely independent of trade fluctuations and would be able to reconstitute the works committee as often as necessary, thus keeping it in existence even should most of the previous members have been discharged through slackness.

3. *Elaboration of management organization.* The extent to which management functions can be delegated or management questions and policy be discussed with the workers depends very largely on the degree of completeness with which the management itself is organized. Where this is haphazard and management consists of a succession of emergencies, only autocratic control is possible, being the only method which is quick-acting and mobile enough. Therefore, the better organized and more constitutional (in the sense of having known rules and procedures) the management is, the more possible is it for policy to be discussed with the workers.

#### SOME SCHEMES SUGGESTED

The following suggestions for shop organizations of workers are intended to form one scheme. Their individual value, however, does not depend on the adoption of the scheme as a whole, each being good as far as it goes.

1. *Shop-stewards committee.* As pointed out in the last subsection, in a factory where the trade-union is strong there will probably be a shop-stewards or trade-union committee already in existence. This is, of course, a committee of workers only, elected generally by the trade-union members in the works to look after their interests and to conduct negotiations for them with the management. Sometimes the stewards carry out other purely trade-union work, such as collecting subscriptions, obtaining new members, explaining union rules, etc. Such a committee is the most obvious and simplest type of works committee, and where the composition of the shop is simple (that is, mainly one trade, with no very great differences in grade) a shop-stewards committee could deal with many of the questions laid down as suitable for joint handling.

It is doubtful, however, whether a shop-stewards committee can, or should, cover the full range of workers' activities except in the very simplest type of works. The mere fact that as a purely trade-union organization it will deal primarily with wages and piecework questions will tend to introduce an atmosphere of bargaining, which would make the discussion of more general questions very difficult. Further, such a committee would be likely to consider very little else than the interests of the trade-union or of themselves as

trade-unionists. While this is no doubt quite legitimate as regards such questions as wages, the more general questions of workshop amenities should be considered from the point of view of the works as a community in which the workers have common interests with the management in finding and maintaining the best conditions possible. Moreover, in many shops, where workers of widely differing grades and trades are employed, a shop-stewards committee is not likely to represent truly the whole of the workers, but only the better-organized sections.

The shop-stewards committee, in the engineering trade at least, is fairly certain to constitute itself without any help from the management. The management should hasten to recognize it and give it every facility for carrying on its business, and should endeavor to give it a recognized status and to impress it with a sense of responsibility.

It would probably be desirable that shop stewards should be elected by secret ballot rather than by show of hands in open meeting, in order that the most responsible men may be chosen and not merely the loudest talkers or the most popular. It seems better, also, that stewards should be elected for a certain definite term, instead of holding office, as is sometimes the case now, until they resign, leave the firm, or are actually deposed. The shop-stewards committee being primarily a workers' and trade-union affair, both these points are outside the legitimate field of action of the management. The latter's willingness to recognize and work through the committee should, however, confer some right to make suggestions even in such matters as these.

The facilities granted by the management might very well include a room on the works premises in which to hold meetings and a place to keep papers etc. If works conditions make it difficult for the stewards to meet out of work hours, it would be well to allow them to hold committee meetings in working hours at recognized times. The management should also arrange periodic joint meetings with the committee, to enable both sides to bring forward matters of discussion.

The composition of the joint meeting between the committee of shop stewards and the management is worth considering shortly. In the conception here set forth the shop-stewards committee is a

complete entity by itself; it is not merely the workers' section of some larger composite committee of management and workers. The joint meetings are rather in the nature of a standing arrangement on the part of the management for receiving deputations from the workers. For this purpose the personnel of the management section need not be fixed, but could well be varied according to the subjects to be discussed. It should always include, however, the highest executive authority concerned with the works. For the rest, there might be the various departmental managers and, sometimes, some of the foremen. As the joint meeting is not an instrument of management taking decisions by vote, the number of the management contingent does not really matter beyond assuring that all useful points of view are represented.

Too much importance can hardly be laid on the desirability of regular joint meetings, as against *ad hoc* meetings called to discuss special grievances. According to the first plan each side becomes used to meeting the other in the ordinary way of business, say once a month, when no special issue is at stake and no special tension is in the air. Each can hardly fail to absorb something of the other's point of view. At a special meeting, on the other hand, each side is apt to regard as its business not the discussion of a question on its merits but simply the making out of a case. And the fact that a meeting is called specially means that expectations of results are raised among the other workers which make it difficult to allow the necessary time or number of meetings for the proper discussion of a complicated question.

Where women are employed in considerable numbers along with men the question of their representation by stewards becomes important. It is as yet too early to say how this situation can best be met. If they are eligible for membership in the same trades-unions as the men, the shop-stewards committee might consist of representatives of both. But considering the situation which will arise after the war, when the interests of the men and of the women will often be opposed, this solution does not seem very promising at present.

Another plan would be for a separate women's shop-stewards committee to be formed, which would also meet the management periodically and be, in fact, a duplicate of the men's organization. It would probably also hold periodic joint meetings with the men's

committee, to unify their policies as far as possible. This plan is somewhat cumbersome, but seems to be the only one feasible at present, on account of the divergence of interest and the very different stage of development in organization of men and women.

2. *Social union.* Some organization for looking after recreation is in existence in many works, and if not, there is much to be said for the institution of such a body as the social union here described.

Although the purpose which calls together the members of a works community is, of course, not the fostering of social life and amenities, there is no doubt that members of such communities do attain a fuller life and more satisfaction from their association together when common recreation is added to common work. It may, of course, be urged against such a development of community life in industry that it is better for people to get away from their work and to meet quite another set in their leisure times. This is no doubt true enough, but the number of people who take advantage of it is probably very much less than would be affected by social activities connected with the works. The development of such activities will, in consequence, almost certainly have more effect in spreading opportunities for fuller life than it will have in restricting them. Moreover, if the works is a large one, the differences in outlook between the various sections are perhaps quite as great as can be met with outside. For this reason the cardinal principle for such organizations is to mix up the different sections and grades, especially the works and the office departments.

The sphere of the social union includes all activities other than those affecting the work for which the firm is organized. This sphere being outside the work of the firm, the organization should be entirely voluntary and in the hands of the workers, though the management may well provide facilities such as rooms and playing fields.

Two main schemes of organization are usual. In the first a general council is elected by the members, or, if possible, by all the employees, irrespective of department or grade. This council is responsible for the general policy of the social union, holds the funds, and undertakes the starting and supervising of smaller organizations for specific purposes. Thus, for each activity a club or society would be formed under the auspices of the council. The clubs would manage their own affairs and make their own detail arrangements.

It is most desirable that the social union should be self-supporting as far as running expenses go and should not be subsidized by the management, as is sometimes done. A small subscription should be paid weekly by every member, such subscription admitting them to any or all clubs. The funds should be held by the council and spent according to the needs of the various clubs, not according to the subscriptions traceable to the membership of each. This is very much better than making the finances of each club self-supporting, since it emphasizes the "community" feeling, is very simple, and enables some forms of recreation to be carried on which could not possibly be made to pay for themselves.

The second general type of social-union organization involves making the clubs themselves the basis. Each levies its own subscriptions and pays its own expenses, and the secretaries of the clubs form a council for general management. This is a less desirable arrangement, because each member of the council is apt to regard himself as there only to look after the interests of his club, rather than the whole. The starting of new activities is also less easy than under the first scheme.

3. *Welfare committee.* The two organizations suggested so far, namely, shop-stewards committee and social union, do not cover the whole range of functions outlined in Section I. In considering how much of that field still remains to be covered it is simplest first to mark off, mentally, the sphere of the social union; namely, social activities outside working hours. This leaves clear the real problem; namely, all the questions affecting the work and the conditions of work of the firm. These are then conceived as falling into two groups. First, there are those questions in which the interests of the workers may be opposed to those of the employer. These are concerned with such matters as wage and piece rates, penalties for spoiled work, etc. With regard to these discussion is bound to be of the nature of bargaining, and these are the field for the shop-stewards committee, negotiating by means of the periodical joint meetings with the management.

There remains, however, a second class of questions, in which there is no clash of interest between employer and employed. These are concerned mainly with regulating the "community life" of the works; and include all questions of general shop conditions and amenities

and the more purely educational matters. For dealing with this group a composite committee of management and workers, here called the Welfare Committee, is suggested.

This would consist of two parts :

1. Representatives elected by workers.
2. Nominees of the management.

The elected side might well represent the offices, both technical and clerical, as well as the works, and members would be elected by departments, no account being taken of the various grades. Where women are employed it would probably be desirable for them to elect separate representatives. If they are in departments by themselves, this would naturally happen. If the departments are mixed, the men and women of such departments would each send representatives.

The trade-union or unions most concerned with the work of the firm should be represented in some fairly direct way. This might be done in either of two ways :

1. If a shop-stewards committee exists, it might be asked to send one or more representatives.
2. Or each of the main trade-unions represented in the works might elect one or more representatives to represent their members as trade-unionists.

The management section should contain, in general, the highest members of the management who concern themselves with the running of the works ; it would be no use to have here men in subordinate positions, as much of the discussion would deal with matters beyond their jurisdiction. Moreover, the opportunity for the higher management to get into touch with the workers would be too important to miss. It is doubtful whether there is any need for the workers' section of the welfare committee to meet separately, though there is no objection to this if thought desirable. In any case a good many questions can be handed over by the joint meeting to subcommittees for working out, and such subcommittees can, where desirable, consist entirely of workers.

It may be urged that the welfare committee is an unnecessary complication and either that its work could be carried out by the shop-stewards committee or that the work of both could be handled by a single composite shop committee of management and workers. In practice, however, a committee of the workers sitting separately



to consider those interests that are, or appear to be, opposed, with regular deputations to the management, and a composite committee of workers and management sitting together to discuss identical interests would seem the best solution of a difficult problem.

Everything considered, therefore, there seems, in many works at least, to be a good case for the institution of both organizations, that of the shop stewards and that of the welfare committee. The conditions making the latter desirable and possible would seem to be

1. A management sufficiently methodical and constitutional to make previous discussion of developments feasible.
2. The conditions of employment fairly stable.
3. The trades and grades included in the shop so varied and inter-mixed as to make representation by a committee of trade-union shop stewards incomplete.

### SECTION III. SUMMARY AND CONCLUSIONS OF SECTIONS I AND II

Gathering together the views and suggestions made in the foregoing pages, it is felt that three separate organizations within the works are necessary to represent the workers in the highly developed and elaborate organisms which modern factories tend to become.

It is not sufficient criticism of such a proposal to say that it is too complicated. Modern industry is complicated, and the attempt to introduce democratic ideas into its governance will necessarily make it more so. As already pointed out, the scheme need not be accepted in its entirety. For any trade or firm fortunate enough to operate under simpler conditions than those here assumed only such of the suggestions need be accepted as suit its case.

The scope of the three committees is shown by the following summary:

#### 1. *Shop-stewards committee*

*Sphere.* Controversial questions where interests of employer and worker are apparently opposed.

*Constitution.* Consists of trade-unionist workers elected by works departments.

Sits by itself, but has regular meetings with the management.

*Examples of questions dealt with:*

Wage and piece rates.

The carrying out of trade-union agreements.

Negotiations *re* application of legislation to the workers represented; for example, dilution, exemption from recruiting. The carrying out of national agreements *re* restoration of trade-union conditions, demobilization of war industries, etc. Introduction of new processes. Ventilation of grievances *re* any of above. Etc., etc.

## 2. *Welfare committee*

*Sphere.* "Community" questions, where there is no clash between interests of employer and worker.

*Constitution.* Composite committee of management and workers, with some direct representation of trade-unions.

Sits as one body, with some questions relegated to subcommittees, consisting either wholly of workers or of workers and management according to the nature of the case.

*Examples of questions dealt with:*

Shop rules.

Such working conditions as starting and stopping times, meal hours, night-shift arrangements, etc.

Accident and sickness arrangements.

Shop comfort and hygiene.

Benevolent work, such as collections for charities, hard cases of illness, or accident among the workers.

Education schemes:

Trade technic.

New works developments.

Statistics of works activity.

Business outlook.

Promotions—explanation and, if possible, consultation.

Ventilation of grievances *re* any of above.

## 3. *Social union*

*Sphere.* Social amenities, mainly outside working hours.

*Constitution.* Includes any or all grades of management and workers.

Governing body elected by members irrespective of trade, grade, or sex.

*Example of activities:*

Institution of clubs for sports—cricket, football, swimming, etc.

Recreative societies—orchestral, choral, debating, etc.

Arranging social events—picnics, dances, etc.

Provision of games, library, etc., for use in meal hours.

Administration of clubrooms.

C. G. RENOLD

## XXIII

# LABOR ADMINISTRATION IN THE SHIPBUILDING INDUSTRY DURING WAR TIME<sup>1</sup>

## THE FUNCTIONING OF THE ORGANIZATIONS UPON PROBLEMS

LIKE practically every governmental agency, the system of shipyard labor administration was just getting into its stride when the armistice was signed. Early mistakes were being remedied, and a thorough and comprehensive machinery had just been set up. But relatively short as was the period in which the work was performed, the functioning of the organizations upon the various problems can be studied and stated with a fair degree of accuracy.

### I. WAGES

The wage question was perhaps the most perplexing problem with which the Emergency Fleet Corporation dealt. Increases, it should be realized, were granted not only by the Shipbuilding Labor Adjustment Board but by the Corporation itself. In May, 1918, the Corporation granted certain increases to salaried employees who earned less than \$2000 a year, since the Board had made no provision for these grades. Increases for leading men, quarter men,<sup>2</sup> and foremen, who had been omitted by the Board, were also granted in order that these classes might receive a wage in reasonable balance with the wages of the men employed under them. The Fleet Corporation, however, did not grant further increases in the fall of 1918, because of the signing of the armistice and the probability of a plentiful labor supply.

<sup>1</sup> From *Journal of Political Economy*, Vol. XXVII (1919), pp. 362-396.

<sup>2</sup> By leading man is meant the foreman of a group of ten to eighteen workmen; by quarter man, the foreman of a group of twenty-four to thirty workmen.

It has always puzzled the man in the street how the Adjustment Board and the Fleet Corporation were enabled to order these increases to be paid and by what power they compelled the shipbuilders, who were not themselves parties to the memorandum creating the Board, to comply with their decisions. The answer is very simple. The Fleet Corporation was enabled to make these awards effective only by promising to reimburse the shipbuilders for any added labor cost occasioned either by the decisions of the Board or by the instructions of the Corporation.

It must not be thought, however, that this policy of reimbursement was adopted immediately and uniformly. It was, indeed, uncertainty over this very question in the fall of 1917 that delayed the organization of the Board. For months after the first decisions it was the practice to grant reimbursement only when the companies made urgent pleas and not to grant it to companies who entered no claim. Until June 1, 1918, there was no uniform method of granting this reimbursement. Each case was settled by itself, and no common accounting practice in computing or paying the reimbursement was followed. The shipbuilders were compelled to struggle for what they got, and many who were in ignorance of the situation did not ask for any reimbursement at all. The situation became so unsatisfactory that on May 31, 1918, the Fleet Corporation issued a lengthy General Order outlining a uniform policy to be followed in computing any paying for the increased labor cost.<sup>1</sup> This was followed by a series of General Orders which covered further points.

It was, however, one thing to establish wage rates and another to enforce them, and it was their enforcement that occasioned the greatest difficulty and unrest. The violations were of two main types:

1. *Neglect on the part of shipbuilding companies to pay workmen back pay due them.* This was a provocative cause of dissatisfaction. The Adjustment Board made all of its major decisions retroactive to varying dates. The computing of this back pay was difficult, and the shipbuilding companies were very slow in complying with the orders of the Board and the Fleet Corporation. In September, 1918, some of the yards in the Columbia River district had not paid the retroactive increases granted in the November, 1917, decisions. The

<sup>1</sup>This was the much-consulted General Order No. 36.

conditions were also unsatisfactory in several other districts. This failure promptly to pay retroactive increases had the inevitable result of arousing the ire of the men and making them impatient with the whole system of wage administration.

2. *Violations of the established rate.* This type of violation was even more common, and was basically more important, than the former. The two memoranda which created the Board were drawn up in the period when it was thought that the chief purpose in fixing the wage scale was to protect the standard of living of the workers against the increase in prices. It was therefore originally intended to make the wage scale fixed by the Board merely a minimum. Both memoranda term the wage rates which the Board was to fix as "basic standards." The accepted interpretation of this phrase is that the rates established are to be minima below which no member of a craft can be paid, but above which individual workers can receive a higher wage through superior ability or by the process of individual bargaining. A strike on the part of the union, however, to obtain a higher basic wage for all members of the craft would constitute a violation of the agreement and a breach of faith. The Board in every one of its first set of decisions explicitly stated that the rates were minima.

During the first few months some violations were complained of where companies were refusing to pay as high wages as the Board had ordered or where they were classifying the men in lower grades with lower wages than those to which the workmen rightly belonged. The Corporation promptly remedied such conditions.

In the late winter and early spring of 1918 another significant development occurred, which was caused partly by the drain upon the nation's man power, following upon the expansion of the army. A decided shortage in labor became apparent, which was especially acute in some of the more skilled trades, such as coppersmiths, chip-pers and calkers, riveters, machinists, blacksmiths, etc. There was, moreover, a very considerable shortage of common labor, which became more acute after the heavy draft quotas of the late spring and early fall of 1918.

Each contractor was desirous of completing his contract and was therefore eager to get a sufficient number of men. He was consequently willing to pay more than the fixed scale in order to get the

men. The situation became especially acute in the Pacific Northwest, where the wage scale in one of the largest shipbuilding plants and in many of the outside shops had always been higher than that set by the Board, even when the 10 per cent bonus of December, 1917, was added. The result was a competitive bidding for labor. Workmen moved about from plant to plant, and the stability of labor was seriously threatened. The production program was hindered, for men who were needed on the job were rushing about from plant to plant on railroad trains. The Fleet Corporation tried to check this by refusing, on June 1, 1918, to reimburse shipbuilders for any wages paid in excess of those fixed by the Board. This was strengthened by a General Order, issued July 1, 1918, making the established scale a maximum and prohibiting employers from exceeding it. It should be emphasized that it was the Fleet Corporation and not the Adjustment Board that issued these orders which established the Board's rates as maxima, although the Adjustment Board unofficially approved.<sup>1</sup>

These orders<sup>2</sup> of the Corporation were followed in the majority of cases, but in at least two sections of the country they were disregarded. As has been stated, the situation in the Seattle district had always been unsatisfactory, and in order to hold their labor, many yards raised their wages to a point far in excess of that set by the Board, until the situation was one in which practically 75 per cent of the men were receiving more than the authorized wage. The piecework trades along the Atlantic Coast were also paid at a higher rate than that authorized, owing to the permission of the Board to use the "allowance system" on difficult work. This was originally intended to apply only to work which was so difficult that piece rates would be unfair, and it was not intended to cover more than 10 per cent of the operations in the pre-war

<sup>1</sup>This was sometimes forgotten even by members of the Board itself; thus Mr. Macy in blaming Seattle shipyard employers states that they "violated all orders of the *Shipbuilding Labor Adjustment Board* and the Emergency Fleet Corporation by paying wages far in excess of the scale authorized" (*National Civic Federation Review*, February, 1919, p. 2). (Italics are mine.)

<sup>2</sup>To prevent shipbuilders constructing for private account from disrupting the labor market, all yards of this group were compelled to obtain a permit from the Corporation, binding themselves not to exceed the authorized scale. The legal sanctions behind this requirement were (1) power to requisition ships, (2) withholding priorities on materials, etc.

times. The shortage of workers, however, was such that most of the Atlantic Coast companies abused the use of the "allowance system" and applied it to nearly all of the piecework, whether it was difficult or not. As a result many of the riveting gangs were granted from \$25 to \$60 a day irrespective of the number of rivets driven, and great abuses resulted. This was, indeed, not finally checked until February, 1919.

A further method of violation was the improper classification of workers by shipbuilding companies. It was not an unknown practice to list workers under classifications with higher rates of pay than were actually deserved. Some yards listed mechanics as leading men, quarter men, or foremen, and thus paid them a higher wage without ostensibly violating the orders of the Corporation. In several yards there were in some trades more foremen than men, while in one yard there were actually thirteen foremen and two men in a particular trade!

The violation of the wage scales was caused not only by the scarcity of labor but by the existence of cost-plus contracts. The number of these contracts was not so large as has been commonly supposed and, indeed, decreased as time went on, but many of the wood-ship yards and a few of the steel yards were on this basis. The inevitable result of these contracts was, of course, to make the contractor less careful of his labor costs. Although there were only a few such yards, their influence was widespread, since they set a pace which other companies felt that they must meet in order to hold their labor force.

In addition, the accounting procedure set up by the Fleet Corporation to cover reimbursement for increased labor cost was cumbersome and involved, and the auditing division was not organized as effectively as it might have been. Prior to the signing of the armistice most of the companies which had paid rates in excess of the authorized scale were reimbursed for all their labor costs and even for their violations. True, the government will not necessarily lose on these reimbursements, for final settlements were not made, and steps have since been taken to protect the Treasury against improper wage-cost claims. Nevertheless the temporary adjustments, which sometimes covered improper claims, played their part in unsettling labor conditions.

The "excessive" wages which many complained that the shipyard workers were receiving, when they did actually occur, did not result from the decisions of the Adjustment Board, which merely adjusted wages in keeping with the increase in the cost of living,<sup>1</sup> but were caused either by the competitive bidding of the employers in giving higher wages than those awarded in order to attract workmen to their particular contract or by the practice of excessive overtime.

In spite of what has been said, it is, however, undoubtedly true that in the majority of cases the Adjustment Board's rates were both maxima and minima, and that consequently standardization of wages was roughly effected.

After the signing of the armistice, as will be stated later, the Fleet Corporation suspended making the Board's rates maxima, although of course it refused to reimburse ship contractors for wages in excess of the Board's scale.

## II. HOURS

The basic eight-hour day was uniformly established in the shipyards as the standard working-day. Due to a previous custom of a Saturday half-holiday in the Delaware River district the basic forty-four-hour week was established there. Overtime was paid for at the rate of time and a half for all districts save the Pacific Coast, where it was paid for as double time. Sunday and holiday work was universally paid for at double rates. The Labor Adjustment Board fixed no limits as to the amount of overtime that could be worked in the Pacific Coast districts, but in their other decisions they prescribed a maximum working-day of twelve hours and a maximum sixty-hour working-week, except at the order of the Fleet Corporation or Navy Department.

The overtime bonuses increased rather than decreased the length of the average working-day. The men were anxious to receive the extra pay for overtime, and the managements were willing, because they could charge the expense to the Fleet Corporation. Owing to an egregious blunder by one of the construction divisions of the Corporation, certain shipyard owners were even paid to July 1, 1918,

<sup>1</sup>The Board increased wages on the Pacific Coast approximately 60 per cent over the 1916 rates. This was not excessive in view of the increase in the cost of living.



an additional bonus of from 25 per cent to 160 per cent on every dollar that the workmen received for overtime.<sup>1</sup>

A better system to encourage overtime could not have been devised. General Manager Piez was constantly exerting pressure to reduce the amount of overtime, but up to June 1 there were no definite orders issued as to the amount which would be allowed, and the district managers of the Corporation were given a great deal of discretion. On June 1 the amount of overtime was fixed at a maximum of two hours per man per day, "except under extraordinary and special circumstances."

The results of overtime work were, of course, lamentable. Not only was it on the whole inefficient but there were cases where men loafed during the first eight hours in order that they might have an excuse for working overtime. It furthermore directly increased absenteeism. Some men would work Sunday at double time and then lay off a day during the week, thus getting their day's rest and receiving seven days' pay for six days' work. It also made many of the rank and file reluctant to have more men added to the working force, since it decreased their opportunities for overtime.

The labor leaders themselves recognized the viciousness of overtime, as did the employers after their premium upon it was taken away, and representatives of both parties from the Pacific Coast recommended that it be entirely prohibited except during cases of urgent necessity. It was not until after the signing of the armistice, however, that the Fleet Corporation issued an order specifically putting the work on an eight-hour day and abolishing overtime. Several small groups of workmen then struck because they were prevented from working more than eight hours a day.

The whole experience with the basic eight-hour day and the overtime bonus during war time was such as to demonstrate conclusively that the basic eight-hour day on contract work for the government really conduces to a long working-day. The men are more eager to receive the overtime bonus than they are to limit their work to eight hours, and "loafing on the job" is the result. Since the government

<sup>1</sup> The reason assigned for granting this bonus was that the efficiency of the yard was decreased by working overtime and that the management should be rewarded for this loss. This is an eloquent bit of testimony to the necessity of centralizing the control of labor matters in one department under competent guidance.

foots the bills the managements do not have the objection to overtime work that they would have if they were compelled to pay. There can be little doubt that the Fleet Corporation lost millions of dollars by reason of this practice, and it seems clear that a better arrangement would have been to establish a flat eight-hour day and to have permitted no overtime save in cases of an emergency and at the express permission of the Corporation's representatives.

### III. UNIONS, SHOP COMMITTEES, AND COLLECTIVE BARGAINING

The creation of the Shipbuilding Labor Adjustment Board was in itself a recognition of the international unions and collective bargaining. The Fleet Corporation dealt with the union officials as representatives of labor, and the policy pursued by the Corporation and by the Board itself was such as to encourage collective bargaining.

The policy of the Board and the Fleet Corporation toward the "closed shop" was really that of refusing to disturb the *status quo*. The Board refused to permit shops to be closed against the will of the employer, if they had not been closed prior to the war. Where the closed shop had existed, as in the San Francisco and Puget Sound districts, it was continued.

The Board declared that discrimination should not be practiced against any workman either on the ground that he belonged, or on the ground that he did not belong, to a union. This was enforced by the Fleet Corporation, and many men who had been discharged or forced from employment were ordered to be reinstated. It was, of course, impossible to enforce this perfectly because of the difficulty in determining the real causes for dismissal.

The principles promulgated by the War Labor Conference Board<sup>1</sup> were adopted by the Fleet Corporation as its labor policy, and it therefore permitted the organization of the workers into unions and protected from discharge the men who joined. It is difficult to measure the growth of unionism among the shipyard workers, but there can be little doubt that the unions made great gains in membership, and that they emerged from the war far stronger than when they went in.

<sup>1</sup> The War Labor Conference Board afterward became by presidential appointment the War Labor Board.

One of the striking acts of the Board was the authorization of shop committees to handle grievances. This was first provided for in the Portland district, where the employers refused to recognize the unions as such. It was later authorized for all other yards, save in the Seattle and San Francisco districts.<sup>1</sup> The establishment of these shop committees was really intended to provide nonunion collective bargaining and adjustment of grievances in those yards which would not recognize unions. Although many of these committees were organized, they cannot be said to have been a success, in actual operation, except in one district.

In one district, for example, not many of the yards had definitely constituted committees, with regular periods of meeting, nor were all crafts within the yards organized. The committees in this district did not consider more than 20 per cent of the complaints which arose, and the other 80 per cent were taken up with the examiner himself either by the business agents of the unions or by the direct appeal of the parties interested.

The chief reasons for the failure of these committees to function were as follows:

1. *The lack of active organization upon the part of the Shipbuilding Labor Adjustment Board.* The Board authorized the organization of the committees, but for a long time did little else. Only one of the examiners devoted much attention to organizing these committees. Moreover, when the committees were organized they were not always given proper facilities for conducting business.

2. *The indifference of the workers.* The men were busy and were earning good wages and did not take much interest in organizing the committees.

3. *The more or less open hostility of the unions.* The unions were afraid that the committees would usurp their functions and that they could be used to break down the unions. This was not wholly unjustified, since in some cases the employers attempted to control the election of the committeemen. Perhaps the most important point about the organization of shop committees is as to whether they will

<sup>1</sup> Although authorized for the Delaware River district in the October 24, 1918, decision, no shop committees were set up there because of the complications with the unions that might result.

be a substitute for, or a supplement to, unionism.<sup>1</sup> The unions have been loath to approve of them until they were convinced that they were intended to be the latter and not the former.

#### IV. LABOR SUPPLY

The Fleet Corporation officials at first regarded the securing of materials as the most pressing production problem, but after this had been centralized in a Supply Division the securing of sufficient labor became the most urgent problem. It was the question whether enough men could be brought into the shipyards and trained that most agitated shipbuilders during 1918. There were really two problems of labor supply: (1) that of securing a sufficient number of men for the industry as a whole; (2) that of distributing this labor so that all yards could have an adequate amount. Table I shows the number of men working in the shipyards. One must first ascertain how many men were needed to carry out the production program before estimating whether the industry as a whole had a sufficient labor force. This can now be done with some accuracy, but it was very difficult formerly, for the Shipping Board never furnished the Fleet Corporation with a program to be attained. The chairman of the Board at Congressional hearings and in public speeches set varying figures. The 1918 program of deliveries for steel ships was set by various authorities at 6,000,000 and 4,000,000 tons. This was later scaled down to 3,100,000 tons by the production engineers of the Fleet Corporation. As for wood ships, there was never a real production program. Contracts were let more to fill the ways than with a view to a comprehensive and well-thought-out policy.

Since only 2,600,000 tons of steel ships were delivered in 1918, the steel-ship shortage was consequently 500,000 tons.<sup>2</sup> Since the average production per man-year was approximately 25 dead-weight tons (which is a fairly creditable production record) the average shortage

<sup>1</sup> See the statement by Mr. Macy, the chairman of the Board, "Shop Committees must not be regarded as a substitute for the unions" (*National Civic Federation Review*, February 25, 1919, p. 2).

<sup>2</sup> That is, if 3,100,000 tons is taken as the goal to be attained. It is a great deal below the early estimates of 6,000,000 tons.

of labor in the steel yards during 1918 seems to have been around 20,000. The adequacy of the wood-ship labor force is difficult to judge, since there was no program with which to compare it. It is unquestionably true, however, that there were as many workmen employed as the value of wooden ships as ocean carriers justified. On the whole, therefore, while there was a shortage of labor in the steel yards, this shortage was not as acute as was maintained at the time.

TABLE I. GROWTH OF THE LABOR FORCE ON E.F.C. WORK IN SHIPYARDS  
BY MONTHS

MONTH	AVERAGE NUMBER OF EMPLOYEES IN WOOD- SHIP YARDS ON E.F.C. WORK	AVERAGE NUMBER OF EMPLOYEES IN STEEL- SHIP YARDS ON E.F.C. WORK	TOTAL EMPLOYEES IN SHIPYARDS ON E.F.C. WORK
1917			
October . . . .	12,000 (est.)	76,000 (est.)	88,000 (est.)
November . . . .	17,000 (est.)	103,000 (est.)	120,000 (est.)
December . . . .	21,000 (est.)	125,000 (est.)	146,000 (est.)
1918			
January . . . . .	31,000	160,000	191,000
February . . . . .	38,000	166,000	204,000
March . . . . .	47,000	181,000	228,000
April . . . . .	58,000	200,000	258,000
May . . . . .	70,000	211,000	281,000
June . . . . .	77,000	237,000	314,000
July . . . . .	81,000	251,000	332,000
August . . . . .	85,000	267,000	352,000
September . . . .	91,000	280,000	371,000
October . . . . .	91,000	284,000	375,000
November . . . . .	86,000	299,000	385,000

These statistics do not include those employed in plants devoted exclusively to fitting out hulls after launching. They do include, however, some clerical employees (not more than a few thousand in number) who should be charged to construction work for the navy.

The total number of employees listed in the table should not be confused with the number of men actually engaged in shipbuilding. In January, 1918, only 63.7 per cent of the employees were shipbuilders, while 26.4 per cent were engaged on plant construction, and 9.9 per cent were office employees. Indeed, until May over 20 per cent of the men were working on plant construction. By October the percentage in shipbuilding had increased to 83.8 per cent of the total force, and the percentage on plant construction had decreased to 7.7 per cent.

Despite the difficulties of drawing men to a new and exposed industry, where transportation and housing facilities were often overcrowded and inadequate, the recruiting of the men for the industry as a whole was accomplished without elaborate administrative organization by the Fleet Corporation itself. The one organization which was started, namely the United States Shipyard Volunteers, was conceived and managed by the Shipping Board and the United States Department of Labor rather than by the Fleet Corporation officials. The 280,000 men who were enrolled in this organization were listed without proper investigation of their qualifications or as to whether they were engaged in other essential industries. Once enrolled, they were not called upon, for preference in employment was given to those who were unemployed over those enrolled in the Shipyard Volunteers. The men had expected that they would soon be called to service in the yards, and many gave up their jobs. The management of the Shipyard Volunteers, however, did not follow up the campaign of enrollment and did not work out with the shipyards any concerted plan whereby the labor requirements of the yards might be ascertained and men furnished to them.

After August 1, of course, the shipyards were compelled to hire all of their unskilled labor through the United States Employment Service. Skilled labor could, however, be hired through private agencies, and the labor scouts of the shipyards themselves were in most cases merely supervised by the Employment Service and allowed to act for their individual companies in the securing of both skilled and unskilled labor.

The movement of labor to the yards was therefore voluntary and in the main unorganized. The facts which enabled the shipbuilding industry to obtain in this way the 300,000 men were principally the following:

1. *Higher wages than those paid in the majority of other industries.* As has been stated, the Adjustment Board and the Fleet Corporation itself sought to make shipyard wages higher than the average wage level in order to draw men to the yards. A substantial differential was, on the whole, created. In certain sections of the country, however, the wage scale in outside industries for some classes of labor caught up with and even surpassed that of the shipyards. On the Pacific Coast much difficulty was experienced in retaining common

labor in the shipyards, since lumber camps and other occupations were paying more for common labor than the wage scale fixed by the Board. Late in the summer of 1918 the same situation with respect to common labor prevailed in the Middle Atlantic States.

This attempt of the Board to fix higher wages than those in other industries was probably justified because of the urgency of the need for ships and the necessity of getting men to build them. The men thus attracted were, however, drawn not only from nonessential but from essential industries as well, and the whole situation illustrated the necessity for a general standardization of wages, which undoubtedly would have been effected had the war continued for a few months longer.

2. *Patriotic desire of men to assist the government.* The need for ships was widely advertised, and many thousands of men went to the shipyards in order to help "do their bit."

3. *Protection against draft.* Under the selective-service law the general staff created an "Emergency Fleet" listing, whereby, in addition to the ordinary industrial exemption granted to all essential industries, additional men could be protected from the draft and the labor force constantly stabilized. Some 90,000 workers in the 800 shipyards and industrial plants having contracts with the Fleet Corporation were thus exempted from the draft under this form. Thus both patriotic reasons and the desire to escape military service operated to bring men to the yards and to keep them when they were once there.

4. *Payment by the Fleet Corporation of the transportation expenses of workers to the job.* In order to facilitate the movement of men from inland points to the shipyards, the Fleet Corporation entered into an agreement with the United States Employment Service early in the winter of 1918 to pay the transportation of labor to the yards. This free transportation was not administered very efficiently by the Employment Service, and moreover it operated directly to increase the turnover of labor, because men could leave one job and go to another at the expense of the Fleet Corporation. One man traveled back and forth across the continent three times at the expense of the Corporation. Just before the conclusion of the armistice a system of control had been set up which promised to handle the matter. After the armistice was signed this payment, of course, was discontinued.

While it is probably true that, taken as a whole, the yards of the country had nearly a sufficient labor supply, it is just as true that this supply was poorly distributed. Many yards had so many men that they could not be directed efficiently, and men were compelled to remain idle because of lack of work which they could do. The early days of the Hog Island and Submarine-Boat projects were but lurid examples; the same situation existed, though in a lesser degree, in many other yards.

There were, on the other hand, other yards which were greatly undermanned, and the causes for the dearth of labor in these yards were primarily three:

1. *The individualistic attitude of the shipyard managements whereby each contractor was concerned only with his own contract.* It was the common practice of shipyards to attempt to recruit labor not only from industries other than shipbuilding but from other shipbuilders as well. Sometimes this was done directly, and employees of another company were "scamped" by labor scouts, who promised the men higher wages, more overtime, better housing, and a score of similar inducements. Sometimes it was done indirectly by advertisements stating supposedly superior advantages.

The labor forces of many shipyards were crippled by this "scamping" of labor, and shipbuilders often seemed more interested in stealing labor from other companies than they were in retaining the supply that they had.<sup>1</sup> The employers who were most conscientious and refused to "scamp" were those who were penalized. The result of this individualistic attitude was an enormous loss in productivity, due to the loss of time in the shifting of labor and the impossibility of maintaining a stable force.

2. *Competition for labor by other government departments.* A number of yards lost their men because other near-by government industries were paying higher wages than the yards could pay.

3. *Unattractiveness of certain shipyards and inefficient management.* Wherever poor housing, inadequate transportation, and insanitary and dangerous conditions existed men were loath to stay.

<sup>1</sup>One enterprising labor scout is reported to have promised a group of shipbuilders on the street higher pay than they were then receiving, only to discover, after he had taken them to work, that they were already employed at his own yard!



This was heightened in many cases by the inefficient management of the plants, which made men discouraged and disgruntled. Thus inefficient management was a cause both of some yards' having too much labor and of other yards' having too little.

It has been said above that the Fleet Corporation did not perfect an elaborate organization to deal with the problem of labor supply. A short time prior to the signing of the armistice a Labor Supply Section was created in the Industrial Relations Division to deal with the matter. This section did not have sufficient time to demonstrate its usefulness, but it probably would have served to stabilize the situation and would have aided in supplying the additional men that would have been needed had the war continued. This section had perfected a system whereby the labor needs of the shipbuilders might be ascertained and was devising methods whereby the labor could be supplied to the yards. It was, indeed, getting ready to allocate labor in much the same way in which the Supply Division had allocated materials.

The most important task which the Labor Supply Section actually undertook was its canvass among the demobilization camps. Agents were placed in the thirty demobilization camps of the country to spread information about shipyard work to the soldiers, although work was not guaranteed to anyone. The names of the soldiers interested were filed, and the shipyards were then furnished with the names of men in their vicinity and put in touch with the returning soldiers.

## V. EMPLOYMENT MANAGEMENT

Prior to 1918 only thirteen shipyards had employment departments in any organized form. Yet as the war progressed the problem of increasing ship production, with a steadily decreasing supply of workmen in industry, required shipbuilding managers to give special attention to securing, placing, and maintaining a competent and adequate force of workers. It has been found that in many cases the greatest handicap to production is not the scarcity of men but the attempt to choose and retain employees without careful thought or plan. Accordingly the Industrial Service Department of the Fleet Corporation at first conducted pioneer educational activities to promote the establishment and improvement of properly functioning

employment departments. The Employment Management Branch of the Industrial Relations Division later coöperated with certain universities in training employment managers, provided the shipyards with detailed plans for employment departments to meet their respective needs, and assisted in placing employment managers and assistants as openings for them developed.

The more tangible results of this work may be indicated. In addition to correspondence, conferences, printing manuals, and organizing employment managers' associations, surveys of employment methods were made in fifty-two yards. Direct assistance was given in improving their procedure and in planning fourteen employment and service buildings. Standard forms on employment procedure, handling labor loss, physical examinations, labor adjustment, and other approved practices were prepared and made available to all yards. Forty-one representatives of shipbuilding companies took the employment-management courses. Twenty-nine men were also trained as reserve employment managers, and from these twenty-three were placed as employment and service managers and assistants. New centralized employment departments were established in twenty-one shipyards.

These various improvements have probably contributed to the stabilization of labor employed in shipbuilding. Complicating factors due to the unsettled industrial conditions of war time, especially aggravated in the expanding shipbuilding industry, enter into the situation and prevent a fair comparison of different periods as to the stabilizing effects of proper methods of employment management. No conclusions, therefore, are deducible from the chart of the percentage of labor turnover, given later in this article, as to the effect of improved employment procedure on turnover. Further experience alone can provide data upon which to base reliable deductions.

## VI. THE TRAINING OF MEN

The mere addition of 285,000 men to shipyards did not solve the problem of building ships. A large percentage of these men had to be trained. In November, 1917, this work was organized and two methods were adopted: (1) that of training skilled shipyard craftsmen to become instructors and (2) that of using these instructors

as teachers of green men upon the job in the shipyards to which they returned.

Thirty-seven training centers for the training of instructors were established, covering all sections of the country. Approximately 1100 instructors were given the six weeks' training course, the aim of which was to enable them to teach what they already knew. The men who had been given the instructor training returned to the seventy-one yards from whence they had been sent and started to train workmen on the job.<sup>1</sup>

These training courses in the shipyards were brought under the control and supervision of the Fleet Corporation by an ingenious \$1-a-day bonus given to those yards with properly established training departments, which was to be shared equally between learner and employer if the learner should stay in the employ of the yard for seventy-eight days.

Of the 285,000 which were added to the shipbuilding rolls from October, 1917, to October, 1918, it is probable that one half went into types of work for which little or no training was required. The remaining half, or approximately 140,000 in all, did need training. How far was this need met by the training system which was set up by the Fleet Corporation? Careful estimates made by the Education and Training Section indicate that the 1100 instructors trained approximately 80,000 men, or about 57 per cent of all that needed training.

It was possible to do this because it was found that men could be trained for shipbuilding trades in a relatively short period of time. Statistics from twenty-one yards indicate that the average training period for all men was nineteen days.<sup>2</sup>

Table II shows the length of training period by trades. When the learners left their training course they were able in the main to hold their own with experienced journeymen, while in certain cases they even excelled the journeymen in the latter part of their training period. The men who were thus taught trades were drawn principally from unskilled shipyard work and from manufacturing. The fact

<sup>1</sup>All but three of these were steel-ship yards. The system of training was not adopted by wood-ship yards to any extent.

<sup>2</sup>I am indebted for these statistics to Mr. E. E. MacNary, head of the Education and Training Section.

that these men could be adapted to specific trades in so short a time throws an interesting sidelight upon the amount of skill required in modern industry under the division of labor. One of the most notable contributions to the theory of vocational education was the fact that these men were trained on the job at actual processes under normal working conditions. Supervised by an instructor, they worked in groups alongside of other groups of experienced workmen. It is noteworthy that they did better work in these cases than when they were attached to "school hulls"; that is, hulls upon which only learners were employed.

TABLE II. LENGTH OF TRAINING PERIOD FOR TWENTY TRADES IN TWENTY-ONE YARDS, COVERING 9700 MEN

TRADE	AVERAGE DAYS FOR EACH TRADE	TRADE	AVERAGE DAYS FOR EACH TRADE
Riveters . . . . .	28	Machinists . . . . .	39
Holders-on . . . . .	14	Pipe fitters . . . . .	39
Heaters . . . . .	10	Regulators . . . . .	12
Ship-fitters . . . . .	51	Gas welders . . . . .	30
Chippers . . . . .	28	Electric welders . . . . .	28
Drillers . . . . .	13	Burners . . . . .	23
Reamers . . . . .	12	Punchmen . . . . .	21
Bolters . . . . .	10	Ship carpenters . . . . .	48
Linermen . . . . .	8	Hand calkers . . . . .	34
Erectors . . . . .	20	Tank-testers . . . . .	33

Other educational activities carried through by the Education and Training Section were (1) supplementary industrial training for journeymen by means of short courses on the principles of their trade; (2) technical education for members of the supervisory force; (3) electric welding, in which, through the efforts of the Education and Training Section, a new technic was developed, as well as instructors trained; and (4) foremen-training.

It is not too much to state that the education and training carried through by the Fleet Corporation was a notable achievement in the field of vocational education.

## VII. HEALTH AND SANITATION

It is impossible to appraise fully and accurately the effect on production of the medical and sanitary measures that were fostered by the Industrial Relations Division to improve and maintain the physical welfare of shipyard workers. But the Health and Sanitation Section, which has now become a part of the Public Health Service, functioned effectively in dealing with the concrete problems facing it. The field sanitary engineers inspected the shipyards every thirty days. The section supervised and organized first-aid work for injured men and provisions for medical attention, dispensary and hospital facilities, medical inspection, and quarantine. It improved the sanitation about the shipyards as to water supply, toilets, sewage disposal, bathing facilities, pure food, and mosquito extermination. State and local communities were directly induced to appropriate \$672,000 for exterminating mosquitoes in shipbuilding districts, and the mosquito nuisance was reported to have been virtually eliminated at Hog Island and at the shipyards of Chester, Pennsylvania, and Camden and Gloucester, New Jersey. Epidemics of smallpox and typhoid fever were successfully handled in seven localities, and vaccine and typhus serums were supplied to all yards when needed. Special aid was rendered during the influenza epidemic, and where the scourge threatened serious curtailment of shipbuilding temporary hospitals were erected.

A comprehensive survey of medical and sanitary conditions in shipyards has also been recently undertaken, with a view to having a basis of facts upon which to proceed henceforth. Much remains to be accomplished before adequate sanitary standards may be said to obtain in every shipyard, but the measures already pursued have been of decided educational and material advantage.

## VIII. SAFETY ENGINEERING

The newness of the industry, the inexperience of the men and the management, and the haste with which shipyards were constructed and ships built would be expected to lead to a vastly increased rate of personal injuries to ship workers. In the early months of the war, indeed, signs were not wanting that such was the case. The stories about the dangerous character of the work which were so widely

circulated in the late months of 1917 and the early winter of 1918 were not wholly products of enemy propaganda. In many cases they but mirrored the true condition of affairs.

The work of the Safety Engineering Section in meeting this situation has been most notable. Although established in January, 1918, it was not until the creation of the Industrial Relations Division that its district organization was authorized and began to function. Prior to this time only 8 per cent of the shipyards had safety organizations. The district safety engineers made it their practice to begin by interesting the officials of a shipyard company. Central and departmental safety committees were then promoted, and in yards which were large enough safety engineers were appointed by the company. Safety conferences and committee meetings were held, at which the district safety engineers made addresses. Pamphlets were distributed and bill posters exhibited, all emphasizing the necessity of safety measures to the employees. Surveys of yard conditions were conducted, and standard safety specifications for plant construction and equipment were furnished to all yards. On January 1, 1919, over 70 per cent of the yards had safety organizations, or nearly a ninefold increase over the number six months before.

It is possible to compare the pre-war accident rates with those of the war period after safety measures had been partially set up. Chaney and Hanna's study of accident and accident prevention in marine building shows that in steel-ship yards in 1912 there were 217.8 accidents causing loss of a day's work or more for every 1000 full-time workers per year, or 18.2 per month.<sup>1</sup> Statistics gathered for the last quarter of 1918 from twenty-four typical steel yards employing over 100,000 men show the following accident frequency per 1000 workers in attendance per month:<sup>2</sup>

MONTH	ACCIDENT-FREQUENCY RATE
October . . . . .	5.3
November . . . . .	6.9
December . . . . .	8.1

These statistics show a decrease in accident frequency to a point slightly over one third of the former rate.

<sup>1</sup>"Accidents and Accident Prevention in Machine Building," U. S. Bureau of Labor Statistics, Bulletin No. 216, p. 30.

<sup>2</sup>This includes men working in shipyards on both hulls and boilers.

The frequency rate computed on the same basis for forty-one wood-ship yards, employing approximately 35,000 men, was as follows:

MONTH	ACCIDENT-FREQUENCY RATE
October . . . . .	9.5
November . . . . .	11.4
December . . . . .	9.1

It is important, however, not only to ascertain the decline in the frequency of accidents but also to determine whether the relative severity of accidents decreased. As is well known, a standard weighting system for accidents has been devised by Dr. Chaney. A substantially similar one was used by the Safety Engineering Section, so that the results are comparable.<sup>1</sup> Dr. Chaney found that in steel-ship building in 1912 accidents caused a loss of eight days for every full-time worker per year, or 0.66 days per month.<sup>2</sup>

The accident-severity rate per month during the last quarter of 1918 for the twenty-four steel-ship yards furnishes an interesting comparison with this.

MONTH	ACCIDENT-SEVERITY RATE (DAYS PER MONTH)
October . . . . .	0.791
November . . . . .	0.401
December . . . . .	0.444

It will thus be seen that the severity rates, with the exception of October, were substantially lower than in the pre-war period.

In the forty-one wood-ship yards, however, the record was not so favorable.

MONTH	ACCIDENT-SEVERITY RATE (DAYS PER MONTH)
October . . . . .	1.172
November . . . . .	0.970
December . . . . .	0.899

<sup>1</sup> If anything, the rating adopted by the Safety Engineering Section was slightly more severe.

<sup>2</sup> This should not be interpreted to mean that these days were actually lost during the specific year or month. It merely means that accidents which occurred during this time caused either during that year or in future years a loss of this amount of time. For instance, Dr. Chaney rates a death as 9000 working-days. Thus the loss of time due to this accident would be spread over thirty years.

Although more detailed statistics are not available for months since December, 1918, the facts at hand seem to indicate that there has been a somewhat steady decrease in the frequency and severity of accidents. It seems probable that, as a result of safety measures, from 12,000 to 13,000 fewer accidents occurred during the last quarter of 1918 alone than would have occurred had the pre-war conditions existed.<sup>1</sup> Such a showing is all the more remarkable when the sudden expansion of the industry and the addition of nearly 300,000 "green men" is considered.

The reduction of accidents effected by the Fleet Corporation, however, not only saved many lives and much human loss but also materially reduced the labor cost to shipbuilding companies and thus to the Fleet Corporation. Sixty-nine shipbuilding companies were enabled to secure a reduction in their insurance premium because of the safety measures introduced at the instance of the Safety Engineering Section. This reduction totaled in all several millions of dollars.<sup>2</sup>

#### IX. THE INSTABILITY OF LABOR

Table III shows the labor turnover from January to September, 1918, for 90 representative companies, which in September employed 273,632 shipbuilders. The table shows the following:

1. That the turnover for the country as a whole was at an annual rate of over 200 per cent in practically every month. In some months

<sup>1</sup>While reading the proof of this article, a further study by Dr. Chaney appeared which affords a basis for further comparison. Dr. Chaney, after a study of the 1917 accident rates in several long-established shipyards, finds that, though the accident-frequency rates decreased from 217.8 for every 1000 full-time workers per year as in 1912 to 60.9 in 1917, the accident-severity rates increased from 6.6 to 10.8. It is probable that the newly established yards had a much higher frequency rate in 1917 and the early part of 1918 than these long-established yards and that their accident-severity rate was as high if not higher. The work of the Safety Engineering Section, therefore, appears to be even more effective than indicated above as respects the decrease in the severity of accidents, although it is possible that its influence in causing a decline in the frequency of accidents was not as great as might be expected from the 1912 figures. For the later study of Chaney's, see U. S. Bureau of Labor Statistics, *Monthly Labor Review*, Vol. VIII, No. 4 (1919), p. 16.

<sup>2</sup>As has been explained, the increased labor cost caused by the decisions of the Adjustment Board was ultimately paid for by the Fleet Corporation. The increase in wages necessitated a consequent increase in insurance premiums, which was chargeable against the Fleet Corporation. A reduction of the insurance premium, therefore, decreased the amount which the Fleet Corporation was compelled to reimburse.



it was as high as 300 per cent. In other words, it was necessary to hire from three to four men in a year in order to increase the working force by one.<sup>1</sup>

2. The turnover for wood-ship yards was slightly less than that for steel yards.

3. The turnover for the three fabricating yards<sup>2</sup> was the highest of all types of construction, averaging 447 per cent for the nine months.

4. The turnover was heaviest in the Pacific Coast yards and those north of Chesapeake Bay, while it was lightest in the yards of the Great Lakes and those of the Middle Atlantic district (Chesapeake Bay to Wilmington, North Carolina). It is not an accident that the districts where the turnover was the heaviest were those where there had been the greatest violation of the Macy scale and the heaviest competitive bidding for labor by the shipyards.

5. The turnover was lightest in the winter months and increased during the late spring, summer, and fall. It is difficult to tell whether this was purely a seasonal variation or whether it was due to the competitive bidding for labor in excess of the established scale. This latter factor made the situation worse as time went on.<sup>3</sup>

<sup>1</sup>The method of calculating the labor turnover was as follows: The number of shipbuilding employees on the pay roll for each week during each month was added, and the sum was divided by the number of weeks in the month. This method secured the average number on the pay roll. The average number of shipbuilding employees on the pay roll was divided into the number of shipbuilding employees replaced during the month, giving the turnover percentage for the month. The monthly turnover percentage was reduced to a yearly basis for purposes of uniform comparison by multiplying the monthly percentage by the factor 10.4 (that is, 25 divided by 5) when five weeks were included in the month, and by 13 (that is, 52 divided by 4) when four weeks were included in the month. When the pay roll was increasing, the number of men replaced would be the number lost from the pay roll (in operations), while when the pay roll decreased the number of men replaced would be the total number hired.

<sup>2</sup>Fabricating yards are so termed because there is no fabricating done at them! The parts are prepared at various other plants and shipped to these yards, where they are assembled. The term "assembling yards" would be much more accurate.

<sup>3</sup>Dr. Boris Emmet's study in an automobile establishment indicates that the labor turnover in that plant uniformly increased during the spring and summer months and decreased during the winter. This may be due to the greater prevalence of employment during the summer months, which entices workmen from job to job, while in the winter they feel that they should hold on to whatever jobs they have. See "Labor Turnover and Employment Policies of a Large Motor Vehicle Manufacturing Establishment," U. S. Bureau of Labor Statistics, *Monthly Labor Review*, Vol. VII, No. 4 (1918), pp. 1-18.

TABLE III  
 TURNOVER PERCENTAGES FOR SHIPBUILDING EMPLOYEES  
 (Yearly Basis)

DISTRICTS	NO. OF YARDS REPORT- ING EVERY MONTH	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	FIRST QUARTER	SECOND QUARTER	THIRD QUARTER	NINE MONTHS
Steel-Ship Yards														
North Atlantic	7	202	165	178	195	168	170	196	243	225	180	177	219	194
Delaware River	6	189	204	146	153	183	199	170	224	257	176	180	214	193
Middle Atlantic	3	111	112	131	118	101	140	190	270	191	117	119	218	158
Southern	4	176	212	134	143	134	168	160	199	174	147	149	175	163
Gulf		No steel-ship building companies in this district												
Great Lakes	14	219	199	233	192	181	138	190	196	205	214	168	195	190
North Pacific	8	184	234	276	374	362	407	369	332	313	229	380	340	321
No. 11		No steel-ship building companies in this district												
South Pacific	4	262	329	371	248	237	256	270	244	198	317	246	238	256
Fabricating yards	3	287	205	213	114	131	277	257	543	705	220	195	489	447
All districts	48	201	216	226	216	205	229	235	298	242	212	216	251	231
Wood-Ship yards														
North Atlantic	12	197	209	246	198	172	169	240	211	224	216	176	230	208
Delaware River		No wood-ship building companies in this district												
Middle Atlantic	2	163	217	55	161	90	134	231	112	79	117	122	145	134
Southern	4	276	82	146	209	197	221	360	217	276	151	204	284	240
Gulf	5	217	247	260	189	258	335	254	212	268	239	273	245	253
Great Lakes	1	190	35	46	189	138	0	356	404	348	87	122	406	162
North Pacific	6	197	172	281	263	271	247	249	263	235	210	260	248	245
No. 11	7	178	122	174	239	224	244	278	222	250	158	235	251	223
South Pacific	5	144	183	257	205	170	242	231	174	203	195	204	220	208
Fabricating Yards		No wood-ship building companies in this district												
All districts	42	192	176	222	218	214	234	266	220	242	194	223	244	226

Description of districts: North Atlantic—all yards north of Newark, New Jersey; Delaware River—all yards on Delaware River; Middle Atlantic—all yards on Chesapeake Bay, Potomac River, and Atlantic Coast from Baltimore, Maryland, to Wilmington, North Carolina; Southern—all yards from Wilmington, North Carolina, to Mississippi River; Gulf—yards west of Mississippi on the Gulf; Great Lakes—all yards on Great Lakes; North Pacific—all wood-ship yards in Washington save those on the Columbia River (which are in District 11) and all steel-ship yards in Washington and Oregon; District 11—all wood-ship yards in Oregon and on Columbia River, save those of Coos Bay; South Pacific—all California yards and those of Coos Bay, Oregon.

Turnover is not the only factor in the instability of labor. Though absenteeism is often confused with turnover, it is really a separate item. Absenteeism differs from turnover in that while turnover

represents a changing of positions, absenteeism represents the absence from a position while one is employed.

Table IV shows the percentage of attendance of all employees (not shipbuilders alone) in 90 representative companies. These companies employed over 320,000 workmen in September, 1918.<sup>1</sup>

TABLE IV. AVERAGE PERCENTAGE OF PAY ROLL IN DAILY ATTENDANCE FOR ALL EMPLOYEES

DISTRICTS	NO. OF YARDS REPORT- ING EVERY MONTH	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	FIRST QUARTER	SECOND QUARTER	THIRD QUARTER	NINE MONTHS
Steel-Ship Yards														
North Atlantic	7	67.9	68.0	71.0	73.0	78.1	79.1	79.7	83.3	78.3	69.0	77.0	80.4	76.3
Delaware River	6	73.8	78.5	84.7	85.4	84.2	86.8	84.0	85.7	81.2	79.1	85.4	83.6	83.1
Middle Atlantic	2	64.1	72.1	77.1	76.4	78.7	82.3	77.2	74.6	80.2	71.3	79.3	77.3	76.5
Southern	4	89.1	89.4	84.6	80.5	84.6	84.1	86.3	86.4	85.9	87.3	83.4	86.2	85.5
Gulf	No steel-ship building companies in this district													
Great Lakes	14	77.0	79.4	83.1	84.5	83.7	88.8	86.0	86.5	83.8	79.9	85.6	85.4	84.2
North Pacific	8	92.4	89.5	88.2	88.9	89.5	87.7	85.1	85.6	83.3	90.1	88.7	84.7	87.6
No. 11	No steel-ship building companies in this district													
South Pacific	4	90.9	88.1	87.9	88.8	90.5	92.5	88.8	94.0	82.5	88.7	90.7	88.4	89.3
Fabricating yards	3	61.5	73.5	77.4	73.9	82.2	87.2	83.4	80.3	82.2	69.8	81.5	82.0	78.4
All districts	48	74.0	78.3	81.1	81.0	84.0	86.6	83.9	84.8	81.7	77.7	84.0	83.5	82.2
Wood-ship Yards														
North Atlantic	12	79.3	76.7	83.1	84.0	86.2	87.8	86.8	88.6	80.5	80.0	86.3	85.5	84.9
Delaware River	No wood-ship building companies in this district													
Middle Atlantic	2	69.0	77.1	76.5	74.7	79.1	79.9	78.1	83.8	79.2	74.3	78.6	80.0	78.7
Southern	4	78.2	79.0	83.8	80.7	79.9	86.4	80.1	81.4	77.9	80.6	82.6	79.7	80.9
Gulf	5	74.0	80.4	82.8	85.0	83.7	80.5	80.0	78.4	77.8	79.5	83.1	78.8	80.6
Great Lakes	1	81.4	74.2	95.3	92.6	85.9	89.7	98.3	100.0	99.7	82.5	89.2	99.2	88.6
North Pacific	6	90.7	89.0	90.1	90.5	93.0	92.7	91.1	94.3	90.4	89.9	92.3	91.8	91.6
No. 11	7	91.9	90.9	90.7	91.4	91.7	92.5	89.3	93.3	92.4	91.1	91.9	91.5	91.6
South Pacific	5	90.2	87.2	89.1	90.1	93.2	94.2	92.7	95.1	92.6	88.9	92.6	93.4	92.0
Fabricating yards	No wood-ship building companies in this district													
All districts	42	84.7	84.1	86.8	87.2	87.8	88.6	86.5	88.7	84.8	85.3	87.9	86.6	86.8

<sup>1</sup>The method of computing attendance figures was as follows: The average daily attendance for each week is calculated by adding the attendance for all the days of the week save Sunday, and dividing by 6. The ratio of this average daily attendance to the total number on the pay roll expressed in percentage gives the average attendance. The difference between this and 100 per cent is the amount of absenteeism for the week. To reduce this to a monthly basis,

It must be clearly realized that this percentage of absenteeism merely measures the number of full days lost. It does not include absenteeism resulting from (1) half-days absent and (2) tardiness. The real amount of absenteeism, therefore, is probably greater than that indicated by the statistics given.

The following facts appear from Table IV :

1. That the percentage of days lost per month for the country as a whole ranged in steel-ship yards from 26 to 13.3 per cent and in wood-ship yards from 15.9 to 11.4 per cent. The average absenteeism for the nine months in the steel-ship yards was 17.8 per cent ; in the wood-ship yards, 13.2 per cent.

2. That absenteeism was approximately 25 per cent less in the wood-ship yards than in the steel-ship yards.

3. That absenteeism was higher in the winter months than in the spring and summer. This was particularly true of the steel yards. Climatic reasons were undoubtedly a large factor.

4. That absenteeism is highest in the yards of the Northern Atlantic States and lowest in those of the Pacific Coast. Here again it is probable that the equable temperature of the Pacific Coast was responsible in a large part for the better showing made by these yards.

## EVALUATION OF RESULTS

### I. PRINCIPLES UNDERLYING THE LABOR POLICY OF THE FLEET CORPORATION

Had the managers of the Fleet Corporation been asked, "What is the philosophy upon which your rulings and policies are based?" they would probably have replied, "We have none. We are here to build ships." Speed was their aim. They wanted results. The multitude of questions that poured in upon them were decided, therefore, in the light of this purpose and not by *a priori* theories. From the

a somewhat complicated procedure is followed, whereby four months during the year are treated as including five weeks and eight months as including four weeks, the aim being to make the weekly periods and the monthly periods coincide as evenly as possible. The percentage of attendance for the respective number of weeks in the month is added, and is then divided by the number of weeks, which gives the average attendance for the month.

accumulation of their decisions, however, the student can detect certain fundamental principles being crystallized and an inductive industrial philosophy being formed, of which the promulgators themselves were almost unconscious.

There were really two basic principles upon which the labor policy was based, the implications of which were perhaps grasped by only a few: (1) The first of these was that the hearty support and coöperation of labor was necessary to attain any modicum of success. (2) The second was that the ordinary peace-time method of competition between shipyards was not only inadequate to build the necessary ships under war conditions but was, on the whole, an actual impediment.

Shipbuilding in war time demonstrated the importance of the worker. It was possible in peace time, with the plentiful labor supply, to take less account of labor, but it was impossible in war, for the success of the whole program depended largely upon the zeal and efficiency of the laboring men. The Fleet Corporation could not wash its hands of its labor problem by delegating its responsibility to its contractors, and could secure the coöperation of labor not by autocratic commands but only by taking the workers into its confidence and by jointly sharing with them the settlement of their problems. The creation of the Shipbuilding Labor Adjustment Board was the most important recognition of this truth which any great industry in America has ever made, and throughout the administration of labor matters by the Fleet Corporation it was found absolutely essential to secure the coöperation of the workers themselves. Many of the charges that the workmen have been "coddled" come from those who do not understand the significance of labor which the war has revealed. Such statements are based upon the implicit belief that the workers should do what is ordered by economically stronger classes and that they should be servants of the state but not members of the state.

The other basic principle, namely, the supplementing and restraining of competition, did not manifest itself so quickly, but it emerged after a time as a necessity.

It was necessary to supplement competition, because the work performed by the Education and Training, the Safety Engineering, and the Health and Sanitation sections, together with the Employment

Management Branch and other agencies of the Corporation, would never have been performed by the shipbuilders themselves, for the following reasons :

1. While it was for the interest of the industry as a whole that these facilities should be provided, it need not have been for the interest of any particular yard to perform these functions. If an employer, for instance, provided training for his men at his own expense, there was every likelihood that some other shipyard which had not undergone the expense of training men would offer these men, once trained, more than their original employer could pay and would thus entice them away. The offering of these advantages by a central agency, such as the Fleet Corporation, however, relieved any individual yard of the burden and extended these facilities to the industry as a whole. Though the movement of newly trained men from yard to yard still continued, nevertheless the industry as a whole possessed these trained workmen, a gain which would hardly have materialized had the Fleet Corporation depended upon the initiative of individual employers to furnish them.

2. It was necessary for the Fleet Corporation to provide these services not only because it was not to the economic interest of individual shipyards but also because of the ignorance on the part of many shipbuilders of what was actually to their economic interest. It was not easy for the owners to understand that good health, safety measures, and efficient employment methods meant an increased output. The Industrial Relations Division performed valuable educational work in impressing the necessity for these measures upon indifferent and even hostile concerns.

3. By reason of the nation-wide extent of the organization, improvements in matters relating to labor could be pooled and then quickly extended to all other plants instead of being confined to a few. Illustrations of this can be drawn from such diverse items as the invention of an appliance which lessened the vibration in riveting, methods of managing plant cafeterias, and a plan devised by one district representative of organizing shop committees.

The officials of the Corporation slowly learned, moreover, that competition must be restrained as well as supplemented. This was first learned in the supplying of raw material to the shipyards. It was necessary to centralize the purchasing and distribution of steel, of

lumber, and of other materials, because each plant tried to "play safe" and accumulated more than it needed. Some yards were consequently unable to get the raw materials that they needed. It became almost equally necessary to restrain the competitive methods of attracting labor. The treating of the Macy rates as maxima as well as minima was only one step in the attempt to prevent firms from enticing labor from other shipyards. The Corporation expressly forbade a concern to take men intentionally from other yards, it used all its influence to punish yards which had so offended, and it tried to bring about the return of the men who had been enticed away.

In the fall of 1918 the Corporation found it necessary to regulate advertising for labor, which many concerns were conducting injudiciously, and it issued a General Order regulating advertising, which is perhaps unique. By it shipyards were forbidden to state any special advantages in the form of wages or working conditions and were required to state that they would not employ anyone working in another shipyard.<sup>1</sup>

## II. DEFECTS AND MERITS

So great was the necessity for haste that it is small wonder mistakes were made in building up from nothing a system of labor administration and control. Rather is it remarkable that the mistakes were upon the whole so few, and that the conspicuous merits far outweighed them; but both mistakes and merits alike are of distinct service in pointing out what labor policy a nation should pursue in war time and in peace time as well.

Among the most important defects were:

1. *Delay in setting up an adequate administrative machinery to enforce the rates authorized by the Shipbuilding Labor Adjustment Board.* It is perhaps an American characteristic to enunciate a

<sup>1</sup>The restrictions imposed were as follows:

1. Every advertisement, whether for skilled or unskilled labor, must contain the following statements: "No one working in an Emergency Fleet Shipyard should apply. Wages and working conditions are the same in all such shipyards."

2. No advertisement, whether for skilled or unskilled labor, shall state (a) number of men needed; (b) rate of pay; (c) the amount of overtime or rate of compensation for overtime; (d) housing, welfare work, or similar inducements; (e) inducements in violation of the wages and standards fixed by the Shipbuilding Labor Adjustment Board.

policy and then neglect to provide machinery to see that it is carried out. The Fleet Corporation and the Adjustment Board shared in this American vice. A more thorough organization with several full-time men in each district should have been created early. The Corporation was relatively slow to realize the necessity for a separate system of labor control with administrative decentralization. Had this been in existence earlier, the violations, both those above and those below the Macy rates, would have been fewer.

2. *A rather loosely administered system of reimbursement for added labor cost.* There can be little question that many yards were reimbursed, temporarily at least, for amounts in excess of the actual Macy scale. This was partially caused by a shortage of competent accountants, which rendered the work of detecting these amounts more difficult, and the necessity for training more and better accountants was thereby sharply emphasized.

3. *A too liberal contract system.* Though the contracts for the Fleet Corporation probably protected the government more than those of other government departments, yet many were unduly favorable to the contractor. The cost-plus-percentage contracts, the number of which became fewer as time went on, directly encouraged extravagance in labor matters upon the part of the contractor, while the cost-plus-fixed-fee contracts and agency contracts, where the Fleet Corporation bore all the expense, did not sufficiently discourage such extravagance. Costs were often unduly swollen, and an extravagant attitude was created toward labor matters.

4. *Failure to provide an adequate labor-requirements machinery.* The Fleet Corporation should have established relatively early a staff to estimate the labor requirements of the various yards and the country as a whole, concerning the number and kinds of men needed at varying periods of time. This should have been roughly computed from the estimated production program as it varied, although the uncertainties in the program would have rendered the work exceedingly difficult. Such estimates could have been checked up by estimates from the yards themselves. This system would have furnished the United States Employment Service with an accurate list of labor requirements and would have guided the various activities of the Corporation, as, for instance, the Education and Training Section and other sections. Had such a section been in existence the



Shipyard Volunteers' fiasco might have been avoided. It is only fair, however, to say that such a centralized system of labor requirements had never been created in the country, and it is not wholly proper to reproach the officials of the Corporation for having failed to create such machinery *de novo*.

5. *Failure to acquaint all groups with the real policy of the Fleet Corporation and Adjustment Board.* In a country as large as the United States the coöperation of all parties cannot be obtained merely by the action of committees representing both sides. It is vitally important to educate and inform the rank and file of both employers and employees as to the reasons for and necessity of the policies and methods adopted.

The fundamental merits of the work must also be remembered, however:

1. The necessity of recognizing the principle of collective bargaining and of granting labor a voice in the determination of its own conditions was demonstrated beyond a doubt.

2. For the first time a great government industry realized the necessity for a separate and coördinate organization to deal with labor problems.

3. It was shown that industrial disputes not only should be settled after the fact but should be headed off by a thorough examination into and removal of the basic causes of labor unrest. Not only did this policy prevent interruption in production but it increased the efficiency of the men while at work.

4. The industry was viewed as a whole, and measures were taken to supply the needs of all plants, instead of depending upon the self-interest of the individual contractor to furnish the services for the industry.

5. The principle of basing wages upon increase in the cost of living was officially recognized and applied throughout an important industry. Whatever may be the inadequacies in merely maintaining the *status quo* of a standard of living which may have originally been too low, there can be no question that it was a big improvement over what would have happened had the market system of adjusting wages been followed, with all its accompanying friction. Had not the Fleet Corporation interposed, there is little doubt that the standard of living, instead of being maintained, would have been impaired.

6. During the period after the Shipbuilding Labor Adjustment Board and the Industrial Relations Division were functioning and prior to the signing of the armistice, there were no strikes or lockouts, save of momentary character, in yards doing work for the Fleet Corporation.<sup>1</sup> Industrial peace was thus roughly attained. This should not be understood to mean that there were no rumblings of discontent, but merely that no actual interference with production occurred during hostilities. When the temper of both employers and workmen is considered, this is perhaps the most outstanding proof of the success of the efforts of the shipyard labor administration. There can be little question that had it not been for the Labor Adjustment Board and the Industrial Relations Division the tonnage built would have been less by several hundred thousand tons.

### THE FUTURE

The Shipbuilding Labor Adjustment Board, though its duration was not limited by either of the memoranda creating it, was dissolved on April 1. During the months of February and March many efforts were made to devise some machinery to take its place. The peace-time problem is naturally different from that of war, if for no other reason than that the shipyards will soon be producing primarily for private and not for government account. By July 1 of this year the wood-ship yards will be practically through with Fleet Corporation work, while 30 per cent of the steel-ship yards formerly occupied on government work will be freed for private construction. By December, 1919, over 60 per cent of the steel-ship ways will so be free.<sup>2</sup>

The Emergency Fleet Corporation therefore could no longer presume to act for the builders as it had been compelled to do during the war. The shipbuilders themselves, who had not been parties to the formation of the Board, were the only ones who could enter into a general agreement with the unions.

<sup>1</sup> The Seattle shipyard strike, which led to the general strike, occurred January 21, 1918. This is a story in itself. The settlement was in strict accord with the principles which governed the Shipbuilding Labor Adjustment Board and the Industrial Relations Division.

<sup>2</sup> The prohibition upon the building of steel ships for foreign account has not as yet been raised, but it is expected that it will be very shortly.

After a series of conferences it seems to be undoubted that several boards will replace the Adjustment Board. After a stormy two weeks' conference in Washington between representatives of the local unions and employers from the Pacific Coast, together with representatives of the international unions and the Fleet Corporation, an agreement was drawn up providing for the creation of a board for the Pacific Coast with ten members, with a continuation of the principal conditions established by the Adjustment Board, save that the forty-four hour week was established for the entire year, and not merely for the summer months, as at present. The board, if constituted, will have power over wages, hours, conditions of labor, classification, grievances, etc. The local coast unions will undoubtedly have a larger voice in representing labor on this board than the international unions, and thus one cause of friction will be removed. This agreement has been approved by the employers and will be voted upon by the local unions, by whom it will undoubtedly be rejected.

Although some employers on the Atlantic Coast and Great Lakes are refusing to sign collective agreements with the American Federation of Labor, it is probable that the vast majority of them will do so. The American Shipbuilding Company, a concern with six yards on the Great Lakes, has already signed such an agreement. The two agency yards of the Fleet Corporation (the American International Shipbuilding Corporation at Hog Island and the Merchant Shipbuilding Corporation at Bristol, Pennsylvania) have also signed such an agreement, as have the various plants of the Bethlehem Shipbuilding Company. Many others are about to fall in line, and it is probable that from these individual agreements district boards for the Atlantic Coast and Great Lakes will ultimately be built up.

Until some machinery is set up and functioning, the Emergency Fleet Corporation will maintain the rates and conditions of labor established by the Adjustment Board and will probably use these rates as the basis of reimbursement for all its contract settlements, although of course yards may out of their profits pay the workmen more than the scale.

Whatever boards are set up will be based upon and will take over the principles and policies established by the Labor Adjustment

Board and the Industrial Relations Division. Thus in this newest of industries, perhaps chiefly because of the lack of long-established business inertia, the governmental policies evoked under the stress of war-time pressure are to be taken over as the basis for future peace-time action. One, at least, of war's gains is apparently to be made permanent.

P. H. DOUGLAS

EMERGENCY FLEET CORPORATION

F. E. WOLFE

OHIO WESLEYAN UNIVERSITY

## PART IV. LABOR UNIONS

### XXIV

#### TRADE-UNIONS VERSUS SHOP COMMITTEES<sup>1</sup>

AT THE Convention of the American Federation of Labor in 1918 the following resolution was adopted on the recommendation of the Executive Council:

Betterment for wage-earners under all circumstances depends upon the control they exercise through economic organization. Control brings with it responsibility. The right of workers to a share in the results of increasing production, which makes possible their advancement and reproduction under proper conditions, means greater interest in increasing output.

The Executive Council believes that in all large permanent shops a regular arrangement should be provided whereby:

First, a committee of the workers would regularly meet with the shop management to confer over matters of production; and whereby:

Second, such committee could carry, beyond the foreman and the superintendent, to the general manager or to the president any important grievance which the workers may have with reference to wages, hours, and conditions.

It is fundamental for efficiency in production that the essentials of team work be understood and followed by all. There must be opportunity for intercourse and exchange of viewpoints between workers and managers. It is this machinery for solving industrial problems that is fundamental.

The constructive demands outlined above are predicated upon the basic principle of the right and opportunity of workers to organize and make collective agreements. There is no other way to bring about coöperation for production except by organization of workers.

<sup>1</sup>From Proceedings of the Thirty-eighth Annual Convention of the American Federation of Labor (1918), pp. 85, 329, 330.

Organization is the orderly system for dealing with questions which concern labor in order that decisions and adjustments may be reached that further the best interests of all concerned. Employers and workers must talk over matters of mutual interest and reach understandings. In present large-scale industry this can be done only by the use of the representative system, or what is commonly called collective bargaining, which is the foundation of all effective just labor administration.

This was followed at the Convention of 1919 by the following:<sup>1</sup>

Resolution No. 201—By request of the National Committee for Organizing the Iron and Steel Workers.

WHEREAS, Many steel corporations and other industrial institutions have instituted in their plants systems of collective bargaining akin to the Rockefeller plan; and

WHEREAS, Extensive experience has shown that while the employers are busily carrying on propaganda lauding these company unions to the skies, as a great improvement over trade-unions, they are at the same time just as actively enforcing a series of vicious practices that hamstring such organizations and render them useless to their employees. Of these practices the following are a few:

1. *Unfair elections and representation.* The first essential for the proper working of a genuine collective-bargaining committee is that it be composed entirely as the organized workers may elect and altogether free from the company's influence. Only then can it be truly representative of the men and responsive to their wishes. Upon such committees bosses, representing as they do the antagonism of the company, are so much poison. Not only is it impossible for them personally to represent the men but they also negate the influence of the real workers' delegates. Knowing this very well, the steel companies, through campaigns of intimidation and election fraud, load their company-union committees with bosses, usually to the point of a majority. So baneful is this practice that were the company unions otherwise perfect it alone could suffice to entirely destroy their usefulness to the workers.

2. *No democratic organization permitted.* It is common knowledge that in order for the workers to arrive at a uniform understanding

<sup>1</sup>Proceedings of the Thirty-ninth Annual Convention of the American Federation of Labor (1919), p. 302.

through the systematization and formulation of their grievances and demands it is necessary for them to enjoy and practice the rights of free speech, free assembly, and free association. They must conduct an elaborate series of meetings under their own control and generally carry on their business in a democratic, organized way. But with the company-union system this is impossible. All independent organization and meetings are prohibited on pain of discharge. Consequently the workers are kept voiceless and destitute of a program. They are deliberately held down to the status of a mob. Under such circumstances intelligent, aggressive action by them is out of the question.

3. *Intimidation of committeemen.* As part of the general plan to keep their company unions from being of any possible service to their employees it is customary for the companies to summarily discharge committeemen who dare to make a stand in behalf of the workers. The records show a multitude of such cases. Being unorganized, the men are powerless to defend their representatives. The natural consequence is that the committees soon degenerate into groups of men supinely subservient to the wishes of the company and deaf to those of the workers.

4. *Expert assistance prohibited.* When dealing with their employees in any manner, employers always thoroughly safeguard themselves by enlisting the aid of the very best brains procurable. The only way the workers can cope with this array of experts is to have the help of experienced labor leaders, but under the company-union system this is impossible. All association with trade-union officials is strictly prohibited. The company reserves to itself the right to expert assistance. As a result the green workers' committee, already weakened in a dozen ways, is left practically helpless before the experts upon the company's side.

5. *Company union lacks power.* In establishing wages, hours, and working conditions in their plants employers habitually use their great economic power to enforce their will. Therefore, to secure just treatment the only recourse for the workers is to develop a power equally strong and to confront their employers with it. Unless they can do this their case is hopeless. In this vital respect the company union is a complete failure. With hardly a pretense of organization, unaffiliated with other groups of workers in the same

industry, destitute of funds, and unfitted to use the strike weapon, it is totally unable to enforce its will, should it by miracle have one favorable to the workers. Weak and helpless, all it can do is to submit to the dictation of the company. It can make no effective fight for the men.

6. *Company diverts aim.* As though the foregoing practices were not enough to thoroughly cripple the company unions, the employers make assurance doubly sure by seeing to it that their committees ignore the vital needs of the workers and confine themselves to minor and extraneous matters, such as fake safety-first movements, problems of efficiency, handing bouquets to high company officials, etc. Discussions of wages, hours, and working conditions are taboo on pain of discharge for the committeeman who dares insist upon them. Thus the company unions complete their record of deceit and weakness by dodging the labor question altogether.

WHEREAS, In view of the foregoing facts, it is evident that company unions are unqualified to represent the interests of the workers, and that they are a delusion and a snare set up by the companies for the express purpose of deluding the workers into the belief that they have some protection and thus have no need for trade-union organization; therefore, be it

RESOLVED, That we disapprove and condemn all such company unions and advise our membership to have nothing to do with them; and, be it further

RESOLVED, That we demand the right to bargain collectively through the only kind of organization fitted for this purpose—the trade-union—and that we stand loyally together until this right is conceded us.



## XXV

### TENDENCIES IN TRADE-UNION DEVELOPMENT<sup>1</sup>

"A TRADE-UNION," according to one authority, "is a continuous association of wage-earners for the purpose of maintaining or improving the conditions of their employment."<sup>2</sup> A trade-union, although usually including benevolent and fraternal features, is something more than a mere fraternal order which might easily be a continuous association of wage-earners. The purpose of maintaining or improving conditions of employment involves means and ends and a more or less fixed policy which makes an organization a trade-union. Trade-unionism involves collective bargaining as over against individual bargaining for wages and conditions of employment and the use of the strike as a weapon of last resort in enforcing demands. A number of American trade-unions began as mutual benevolent and fraternal societies and have become under economic pressure regular labor organizations. A similar development is now going on in a number of organizations resembling in some respects trade-unions, and it is the purpose of this paper to show if possible by the study of concrete instances the trend of this development.

The dividing line between fraternal or beneficiary organizations and trade-unions seems to lie in the matter of collective bargaining and in the attitude towards strikes. The National Association of Stationary Engineers, for example, which was organized in 1882, lays stress upon educational and beneficiary features and declares that "this Association shall at no time be used for the furtherance of strikes, or for the purpose of interfering in any way between its members and their employers as to wages."<sup>3</sup> Strikes, moreover, it is urged, are unnecessary because of the identity of interest between

<sup>1</sup>From *Quarterly Journal*, University of North Dakota, Vol. IX (1919), pp. 169-180.

<sup>2</sup>Sidney and Beatrice Webb, *History of Trade Unionism*, p. 1. 1902.

<sup>3</sup>*The National Engineer*, February, 1904, p. 34; Preamble, Constitution (1914), p. 3.

employer and employee. To this the trade-unionist would say that educational and beneficiary features are useful, and that there is an identity of interest up to a certain point, but that without collective bargaining it is impossible to utilize the legitimate power of combination that comes with trade-union organization. Moreover, collective bargaining would be the rule, and strikes would be abolished, as soon as an industry should become completely unionized.

The trend of present-day development may be readily seen by an examination of the policies of various organizations which, on account of more or less similarity, may be divided into the following four groups: (1) organizations whose members are employed directly by the federal government; (2) unions formed of men holding federal licenses; (3) train-service organizations whose members are employed on the railroads; and (4) a miscellaneous group at various stages of development.

### I. FEDERAL GOVERNMENT EMPLOYEES

In this group are found such organizations as the National Federation of Post Office Clerks, the Brotherhood of Railway Postal Clerks, the National Federation of Postal Employees, the Railway Mail Association, the National Association of Letter Carriers, and the United National Association of Post Office Clerks. These are all fraternal and beneficiary associations whose aim is to coöperate with the postal department as to classification, wages, hours of labor, and the upholding at all times of civil-service rules.<sup>1</sup> Most of these organizations have developed into regular trade-unions and have affiliated with organized labor "despite Postmaster General Burleson's known opposition and declaration concerning the menace in postal unions."

The National Federation of Post Office Clerks is a typical illustration of the development of postal unionism. Beginning as merely a fraternal and beneficiary organization, it became a regular trade-union primarily through need of affiliation with organized labor to secure through combined effort better working conditions and higher pay. The present status of the Federation is shown by its being affiliated with the American Federation of Labor, by the fact that its

<sup>1</sup> Constitution, Letter Carriers, 1911, Article II, Section 1.

objects are the social and economic advancement in every lawful way of its members, and by its sympathy with the trade-union movement.<sup>1</sup> However, at its national convention in 1911 a resolution was adopted putting it "on record as most emphatically opposed to strikes in the postal service as a means to bring about the improvement of working conditions in the service."<sup>2</sup> A "Post Office Appropriation Bill," passed in August, 1912, provides that membership in associations like the foregoing "shall not constitute or be cause for reduction in rank or compensation or removal of such person or groups of persons from said service," provided they are "not affiliated with any outside organization imposing an obligation or duty upon them to engage in any strike, or proposing to assist them in any strike, against the United States." This, according to President Nelson, of the National Federation, legalizes the right to affiliate with the American Federation of Labor, because that body does not require any affiliated body to strike nor does it propose to help any body in a strike against the United States. Legislation and not strikes is held to be the last recourse of public employees in settlement of grievances.<sup>3</sup> This right of organization carries with it the further right to petition and agitate for remedial legislation, which had been denied to some extent by the federal officials. The contention of the union officials is that bad conditions brought about the organization of the union and that their aim was amelioration by peaceful methods, and so they are opposed to strikes. "As a matter of fact," said President Nelson to a Congressional committee, "in the Chicago post office before our union came into existence we practically had strikes. The men after working fourteen hours on a stretch refused to work any more; they walked out and deliberately rang the Bundy clock and went home,—seventy-five of them,—and they could not get men to take their places."<sup>4</sup> In reality, these organizations, whether affiliated or not with the American Federation of Labor, are in many respects trade-unions and are recapitulating—the earlier stages at least—the development of many regular trade-unions. It should be borne in mind, also, that the government postal employees in France went out on

<sup>1</sup> Constitution, 1910, Article II.

<sup>2</sup> Proceedings, 1911, p. 37; *The Union Postal Clerk*, January, 1912, p. 14.

<sup>3</sup> *The Union Postal Clerk*, August, 1912, p. 1.

<sup>4</sup> *Ibid.* December, 1911, p. 8.

strike in 1909, and the railroad employees, composed partly of government and partly of private lines, in 1910, and that this latter strike was broken only by calling the men to the colors.

## II. MEN HOLDING FEDERAL LICENSES

Here are found such organizations as the National Marine Engineers' Beneficial Association and the American Association of Masters, Mates, and Pilots. Their members are required to have a federal license to engage in their calling and are subject to government inspection. The conduct of all such licensed officers is subject to investigation by the Local Board of Inspectors, which has power to suspend or revoke licenses. Section 4449 of the Revised Statutes of the United States reads:

If any licensed officer shall, to the hindrance of commerce, wrongfully or unreasonably refuse to serve in his official capacity on any steamer as authorized by the terms of his certificate of license, or shall fail to deliver to the applicant for such service at the time of such refusal, if the same shall be demanded, a statement in writing assigning good and sufficient reasons therefor, or if any pilot or engineer shall refuse to admit into the pilot house or engine room any person whom the master or owner of the vessel may desire to place there for the purpose of learning the profession, his license shall be revoked upon the same proceedings as are provided in other cases of revocation of such licenses.

This law is said by some to deny the right of striking and to put these organizations into the list of nonstriking ones. President William F. Yates, of the National Marine Engineers' Beneficial Association, however, speaking concerning the right of federal control, says in an official letter that "no officer of the inspection service has any right to inquire as to why a man refuses to accept employment, and if he (officer) asks such questions he should be told emphatically that it is none of his business."<sup>1</sup> Then he goes on to say that the language of the section just quoted "has been taken by some members of the inspection service, owners, attorneys, and others to mean that a licensed officer may be compelled to enter the employment of anyone who needs his services, and this meaning or interpretation is absurd in the opinion of good lawyers, and I'd like to see the man

<sup>1</sup> Proceedings, 1910, p. 297.

who could press me in his service against my inclination in the matter." The contention is that a marine engineer or other licensed officer has no "official capacity" on any vessel except he be in the employ of the owners or agents, and the plain intent of the law is to prevent a licensed officer who is regularly employed on a vessel from wrongfully or willfully refusing to do his duty in either refusing to remain on a vessel when required or quitting on eve of departure. "Any other construction attempted," says President Yates, "should be fought to the bitter end."

This association was in fact, if not in name, a trade-union, because its rules provided that no subordinate association could either go on strike or change its scale of wages without the knowledge and consent of the National President and Advisory Board.<sup>1</sup> Likewise most of the troubles or strikes of this organization have been in connection with the making of a scale of wages.<sup>2</sup> Although emphasizing collective bargaining, the Marine Engineers asserted in 1910 that they did not affiliate with other labor organizations because "if engineers live up to the part of licensed officers they need no such alliance and that such would be harmful to both."<sup>3</sup> There were, therefore, no sympathetic strikes in their organization. Even as to strikes, the rule had been enacted that the word "strike" must be eliminated from the records of each subordinate association.<sup>4</sup> The feeling, however, continued to grow that the interests of the Association and its members were being discriminated against on account of their isolated labor position and that they were failing to gain the benefits and rights accruing to other organizations through combined effort, and so the matter of affiliating with the American Federation of Labor became urgent.<sup>5</sup> At the convention of 1916, after considerable discussion and questioning a representative of the Federation as to obligations involved, it was voted to take a referendum vote of the entire membership on the matter of affiliation.<sup>6</sup> The result was 2933 for and 1236 against affiliation. On account, however, of jurisdictional differences with the steam engineers, the machinists, and other unions as to who should do certain work or make repairs, the acceptance of the charter was held in abeyance until the convention of the

<sup>1</sup> Constitution, 1907, p. 27.

<sup>2</sup> Proceedings, 1911, p. 485.

<sup>3</sup> *Id.* 1910, p. 143.

<sup>4</sup> Constitution, 1907, p. 27.

<sup>5</sup> Proceedings, 1916, p. 22.

<sup>6</sup> *Ibid.* pp. 44, 57.

Association in 1917.<sup>1</sup> It is interesting to note that a resolution for the creation of a defense fund was rejected because of "the opinion that the fact that a defense fund was in existence would cause our members to become careless and aggressive."<sup>2</sup> Opposition to the Marine Engineers' coming into the Federation continued, and at the convention of 1917 the National Executive Committee was authorized to continue negotiations with the view of securing an acceptable charter. During 1917 negotiations continued, and finally a conference with the protesting international unions was arranged to be held during the Buffalo convention of the American Federation of Labor. The conference was held Monday evening, November 19, 1917, between representatives of the Marine Engineers and of the protesting organizations involved, namely, the International Association of Machinists, Brotherhood of Boilermakers and Iron Ship Builders, United Association of Plumbers and Steamfitters, and International Brotherhood of Electrical Workers. After considerable discussion an amicable adjustment concerning the division of work was reached, and the protesting unions withdrew their objections. The charter was issued on December 14, 1917, and so, as a result of a movement begun in 1903, the Marine Engineers became affiliated with the American Federation of Labor.<sup>3</sup>

The American Association of Masters, Mates, and Pilots is likewise composed of licensed officers, and its development may be brought out briefly. Although for many years a trade-union in everything but name, it did not become affiliated with the American Federation of Labor until 1916, and then only after much agitation and discussion and the defeat of a similar movement in 1911.<sup>4</sup> The officials of the Association denied for some years that it was a trade-union. In spite of the idea that a licensed officer was in a special class by himself, the feeling grew that "the best interests of this Association require that it be affiliated with the American Federation of Labor in order that its objects and purposes be more fully and completely attained." Such a resolution was passed at the 1916 convention and subsequently sustained by a referendum vote of the entire

<sup>1</sup> Minutes of the Executive Committee, July, 1916, p. 26.

<sup>2</sup> Proceedings, 1916, p. 52.

<sup>3</sup> *Id.* 1912, pp. 225-238; 1917, pp. 401-406; 1918, pp. 308-337.

<sup>4</sup> *Master, Mate, and Pilot*, March, 1911, p. 486.

membership.<sup>1</sup> On account of this action a dual organization, embracing the higher officers in ship service and known as the Shipmaster's Association, has been formed by some seceding members,—an evident example of persistent individualism.

### III. RAILROAD EMPLOYEES

This group is made up of the train-service organizations whose members are employed on the railroads. These are the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Brotherhood of Railroad Trainmen, and the Order of Railway Conductors of America. All have had a common origin and a similar development, as will be brought out.

The Brotherhood of Locomotive Engineers is the oldest organization in this group. It was organized as the Brotherhood of the Footboard in 1863 and reorganized the next year under the present title. During the first ten years the Brotherhood developed fraternal and beneficiary features and had a few local strikes, although these were discouraged by the officials. In 1874 the president was deposed as being too much of a pacifist and was succeeded by P. M. Arthur, who continued at the head of the organization until his death in 1903. While conservative in his policy, Mr. Arthur declared: "We are opposed to strikes and will not resort to them unless forced to do so by the arbitrary actions of our employers. It is our only hope when moral suasion fails."<sup>2</sup> Wage agreements and arbitration rather than strikes were emphasized. Strikes were necessary at times, because some railroad officials were imbued with the ideas of absolute monarchy. An engineer, for instance, was discharged and went to the superintendent and asked, "Will you be kind enough to tell me what I am discharged for?" and received the answer: "You are discharged, are you? Well, that is conclusive evidence that the company doesn't want you."<sup>3</sup> A campaign of education and the use of the strike when necessary brought about better relations. The great strike on the Burlington Railroad in 1888 is said to have been caused by "a narrow view of master and servant all along the line. They were the masters and the road was their kingdom to manage, and no

<sup>1</sup> Proceedings, 1916, pp. 73-74.

<sup>2</sup> *Locomotive Engineers' Monthly Journal*, December, 1876, p. 55.

<sup>3</sup> *Ibid.* May, 1905, p. 393.

interference or arbitration could be allowed.”<sup>1</sup> The result of this most bitter and prolonged strike in its history revealed the strength of the Brotherhood and made it easier to get along with the railroad companies by peaceful means.

The Brotherhood of Locomotive Firemen and the Brotherhood of Railroad Trainmen have had much the same development, as will be indicated briefly. The Brotherhood of Locomotive Firemen was organized in 1873 as a mutual benefit association and did not become a distinct labor organization until 1885, when a protective policy was adopted, much against the wishes of its officers.<sup>2</sup> Likewise, the Brotherhood of Railroad Trainmen, organized at Oneonta, New York, in 1883 as the Brotherhood of Railroad Brakemen and changing its name in 1889, has had much the same development as the other brotherhoods.<sup>3</sup>

The most pronounced and dramatic development in this group is that of the Order of Railway Conductors of America, organized in 1868 and continuing as a purely fraternal organization until 1891. The Conductors stood on the policy adopted at the convention at Elmira in 1877: “Temperance and total opposition to unlawful and violent uprisings of employees, termed ‘strikes.’” At the same time a resolution was passed unanimously that any brother engaging in a strike should be expelled, and that a notice of the same with the cause therefor should be sent to all railroad superintendents within reach of the division secretary. Another resolution at the same convention provided that “the names of all members expelled for drunkenness or engaging in a strike shall be published in the magazine.”<sup>4</sup>

The year 1877 was marked by violent railroad strikes, and the resolutions quoted probably were caused by a reaction from the same. Still, in 1882, Grand Chief Conductor G. S. Wheaton declared that the weaker party succumbs in every strike and that there are no gains through strikes and coercion, and in the convention of the same year the platform adopted ran: “Reserving the right to prosecute our own business according to the dictates of our own conscience, and within the law, according to every other man the same right.”<sup>5</sup> The next year,

<sup>1</sup> *Locomotive Engineers' Monthly Journal*, October, 1896, p. 880.

<sup>2</sup> *Locomotive Firemen's Magazine*, June, 1910, p. 843.

<sup>3</sup> History by D. L. Cease, p. 5.

<sup>4</sup> Proceedings, 1885, p. 739.

<sup>5</sup> *Id.* 1882, p. 507.



1883, a circular was issued stating that the Order was uncompromisingly opposed to strikes or coercive measures.<sup>1</sup> At the Louisville, Kentucky, Convention, in 1885, a resolution was passed and embodied in the Constitution providing that in order to obtain recognition in the matter of obtaining favors and adjusting grievances the division or divisions interested should select a member or members as a committee to wait upon the general officers of the railroad company, and, if refused, to ask the Grand Chief Conductor of the Order to call on the officers and endeavor to effect a settlement. It was made obligatory on the Grand Chief Conductor to comply with such a request in every case, and the expenses attending same were to be borne either by the division or the individual making the request.<sup>2</sup> This marked a change of the Order from a mutual fraternal society to a labor organization, and it was so designated by Grand Chief Conductor Wheaton at the New Orleans Convention in 1887. The movement for making the Order a factor in the adjustment of grievances marked by this opening wedge continued, and the culmination came in the removal of the law against strikes and the election of E. E. Clark, who represented the progressive element, as Grand Chief Conductor at the convention at Rochester, New York, in 1890.<sup>3</sup>

A good deal of the subsequent growth of the Order was due to the wise and energetic policy of Mr. Clark, who served until 1906, when he resigned to accept an appointment on the Interstate Commerce Commission.<sup>4</sup> Just before the removal of the no-strike law a demand for an increase of wages on the New Albany Railroad was met by its superintendent in refusing with the words, "You cannot strike"; but the conductors replied, "We can quit," and the result was that they received the increase demanded.<sup>5</sup> A strike in 1890 and another one in 1891 showed the necessity of some definite strike rules, which later were enacted at the 1891 convention modeled to a large extent on those of the Locomotive Firemen.<sup>6</sup> These rules remain substantially the same to this day, and other actions of the convention placed the Conductors on the basis of a labor organization.

These four train-service brotherhoods, beginning as fraternal and beneficiary orders merely, have thus become under prevailing

<sup>1</sup>Proceedings, 1883, p. 595.

<sup>2</sup>*Id.* 1885, p. 787.

<sup>3</sup>*Id.* 1890, pp. 136, 276.

<sup>4</sup>*Id.* 1907, p. 46.

<sup>5</sup>*Id.* 1890, p. 110.

<sup>6</sup>*Id.* 1891, pp. 43-49, 341-347.

industrial conditions regular trade-unions—business unions pure and simple—which, on account of their strategic position in the railroad industry and consequent advantage in bargaining power, have found it unnecessary to affiliate with other unions, except that at times they have taken in the Order of Railroad Telegraphers in a wage demand. On account of their independent position they are sometimes called the aristocrats of the trade-union world, and their strength may be seen in the passage of the Adamson Act in 1916 by Congress, granting the eight-hour day and extra pay for overtime in order to avert a concerted strike on their part throughout the United States.

#### IV. MISCELLANEOUS

In this fourth group is found a number of organizations at various stages of development recapitulating the experiences of the organizations in the preceding groups. In this group tendencies are not so clear, and some of the movements are not fully developed as yet. One type of organization is that made up of state, county, and city employees, and thus including to some extent men of special training and education. These include such unions as the Bridge Tenders' Union, City Firemen's Union, City Highway Employees, Health Officers' Association, Housing Inspectors, Municipal Employees, School Custodians and Janitors, Sidewalk Inspectors' Association, State Hospital Employees, and the National Federation of State, County, and City Employees. These are, for the most part, local unions affiliated directly and not through an international union with the American Federation of Labor. A movement for the unionization of policemen has been proposed recently in Boston. Police Commissioner O'Meara voiced his strong opposition to the movement in that while a union of some public employees might be a matter of doubtful propriety, one of policemen would mean an abandonment of an impartial attitude on account of affiliation with an outside organization and so not to be allowed.<sup>1</sup> However that may be, the recent strike of the London police is of interest. The *New Statesman* of September 7, 1918, states the issue thus:

We regret that the police were compelled to strike, but we heartily congratulate them upon their victory. Their grievances were manifold, and if, after years of "victimization," stern refusal, and

<sup>1</sup> *Boston Evening Transcript*, June 29, 1918, p. 2.

procrastination, they decided that nothing but a strike could bring the authorities to reason, they had plenty of grounds for their belief. A very brief, and on the whole very orderly and good-tempered, demonstration was all that was necessary. It was too late to try to hit at the Union once more by wholesale dismissals; the public and the newspapers (though shocked) were uniformly sympathetic with the strikers; Mr. Lloyd George was staggered to find, quite suddenly, that a force he believed to live in paradisaal content was thoroughly discontented; and the Government made a swift climb-down. Before the strike the minimum wage was 30 s., with a war bonus of 12 s. and a 2 s. 6 d. allowance for children; the total has now been increased by 13 s. There is also to be a noncontributory pension for widows. Recognition has not been accorded in terms, but the Union Executives were met by Mr. George as the men's representatives, and ex-P. C. Thiel, provisional organizer of the Union and delegate to the London Trades Council, is to be restored to the post from which he had been dismissed for taking part in "an unauthorized association." This means that if "recognition" has not been given in words, it has been given in all save words.

Librarians, school teachers, and college professors have generally regarded themselves as professional men and women. The Library Employees Union has, however, been organized in New York City. A similar movement in Boston has been criticized on the ground that "it has from time immemorial been the rule among professional men and women that an organization of themselves to advance wages is unprofessional and undignified."<sup>1</sup> The most advanced movement in this group is found in the American Federation of Teachers, organized April 15, 1916, and affiliated with the American Federation of Labor, which, on November 18, 1918, included thirty-three local unions stretching from the Atlantic to the Pacific, with one in the Canal Zone. A local union of more than three hundred women teachers was organized at St. Paul in June, 1918, during the convention of the American Federation of Labor. Another local union has just been formed by the faculty of Howard University, Washington, D. C., the first among the colleges. The ideal of the movement is "democracy in education; education for democracy." Evidently there seems to be a reason for this movement, for as one teacher said to the writer, "We have tried literary clubs, social organizations, and teachers' associations and they have not gotten us anywhere, and now we are going

<sup>1</sup> *Boston Evening Transcript*, May 22, 1918.

to try a trade-union." An example of results obtained is shown in the Chicago school situation, where a school board has been legislated out of office and a new one substituted largely by the help of organized labor and other liberal elements. A statutory guarantee of tenure during efficiency has also been obtained. The old board had passed a rule forbidding membership of teachers in organizations affiliated with labor, or any other organizations that might be specified at any time in the future at its caprice. It had also passed a rule abolishing tenure based on meritorious service and had dropped sixty-eight teachers. In such a case as this it is necessary for teachers to combine and affiliate themselves with other organizations and not stand weak and alone. The discharged teachers who belonged to the Federation were all reinstated and have continued their local organization (Chicago Teachers' Federation) without reaffiliation with organized labor, from which they withdrew for the time being as a matter of policy. The alliance of teachers with trade-unionism is a sign of present economic conditions and should arouse considerable interest. The American Federation of Teachers, however, is not a mere bread-and-butter movement, as is shown by its program of educational and social reforms.<sup>1</sup>

In conclusion it may be said that the economic conditions of the present day are such that organizations beginning as fraternal and beneficiary ones become under economic pressure trade-unions. The younger organizations seem but to recapitulate in their growth the development of the older ones. Among the larger organizations studied the exception seems to be the National Association of Stationary Engineers, but even in this organization there has been some agitation for trade-union policy and affiliation.

The question naturally arises: What has become of the spirit of individualism which has always been such a prominent factor in American life? A partial answer is, of course, that a large number of American workmen are not connected with the trade-union movement, although that number is becoming less. But the fact remains that if workmen are organized at all the tendency is to become identified with the trade-union movement. The notion that because a man is a government employee, or a licensed officer, or a more or less

<sup>1</sup> *American Teacher*, September, 1918, pp. 139, 151. Letter of President Charles B. Stillman.

skilled workman, or considers himself a professional man, he can stand alone under present conditions of industrial and social organization, has been weighed in the balance and found wanting. The sentiment "I'm a licensed officer and not a trade-unionist" may swell a man's pride, but it does not go far in getting help for the passage through Congress of a law to better his working conditions. The dissenting votes in the various organizations examined show that the individualistic feeling is not dead, but the majority votes in favor of affiliation with organized labor indicate a recognition of facts and show the trend of events. Whether he will or no, the workman of today is being forced to organize along trade-union lines and is fast developing a strong class consciousness.

GEORGE MILTON JANES

PENNSYLVANIA STATE COLLEGE

## XXVI

### AMALGAMATION OF RELATED TRADES IN AMERICAN UNIONS<sup>1</sup>

WHILE the radical industrial unionists, who favor combining all crafts, skilled and unskilled, in an industry, have been engaged in controversy with the conservative trade autonomists who oppose this policy, a gradual evolution has been taking place in consequence of which craft unions are disappearing. Of 133 national unions, most of them affiliated with the American Federation of Labor, only 28 may be called craft unions, if by a craft we mean work requiring identical skill and training. Nor do these figures tell the whole story, since about one half of the 28 craft unions are coöperating through loose alliances with other related trades in the same industry. Yet the disappearance of the craft union does not necessarily prove the ultimate victory of the industrial union. Only 5 of the national unions claim jurisdiction over all trades in an industry. The remaining 100 are of an intermediate type. They unite only part of the trades in an industry. We shall call them amalgamations of related trades.

The history of American unionism reveals, indeed, an occasional tendency towards disintegration of related trades. Between 1889 and 1902 the printing-pressmen, the bookbinders, the photo-engravers, and the stereotypers and electrotypers seceded, one after another, from the International Typographical Union and formed separate organizations. More recently the window-glass cutters and flatteners have broken away from the Window-Glass Workers' Union. But such instances of disintegration have been comparatively rare. Moreover, crafts which were once united and later became disunited, as, for example, in the boot and shoe industry, have sometimes been brought together again. Much more frequent has been the amalgamation of related trades by the combination of existing

<sup>1</sup>From *American Economic Review*, Vol. V (1915), pp. 554-575.

unions, by the extension of the jurisdiction of a craft union to include unorganized crafts, or simply by the retention of membership in the original organization as the craft has split by division of labor into several crafts.

The amalgamation of related trades has been taking place in the United States almost ever since national unions began to appear. The machinists and blacksmiths, who were united in the same union as early as 1859, managed also to bring the boiler-makers into their organization before it went to pieces in 1877. The Sons of Vulcan, composed of iron-boilers and puddlers, united in 1876 with the National Union of Iron and Steel Roll Hands and the Associated Brotherhood of Iron and Steel Heaters, Rollers, and Roughers of the United States.

The number of such amalgamations has increased greatly since 1894. As division of labor has become more minute, trade barriers have become less rigid, and differences of skill have been lessened. Hence the newly created crafts—if we can still so call them—have not only held together but have also affiliated themselves with other crafts in the same industry. Integration of industry has been another factor. Workers engaged in different parts of the industrial process have been brought together under a common management and have combined in order to coöperate for collective bargaining. Between 1894 and 1904 the various unions of boot and shoe workers coalesced, as did also those of the hatters and of the textile workers; the union of furniture workers combined with that of the machine woodworkers; the Iron Molders' Union absorbed the coremakers; and the union of coal-hoisting engineers was merged into the United Mine Workers. The period witnessed the rise of the Amalgamated Meat Cutters and Butcher Workmen with its minutely subdivided groups of workers, skilled and unskilled, in the meat-packing houses. During this decade, also, the United Brewery Workmen, the United Mine Workers, and the Western Federation of Miners embarked on their policy of industrial unionism and attempted to bring into their organizations all kinds of workers in the industry.

During the ten years since 1904 the movement towards amalgamation of related trades has been accelerated by the rise of the Industrial Workers of the World. Both of the labor federations

which bear this title<sup>1</sup> require that each national union affiliated with it shall embrace all workers in an industry. The growth of these two labor federations has undoubtedly stimulated the American Federation of Labor to pursue a more liberal attitude towards trade amalgamation and industrial unionism. The attitude of the dominant faction in the American Federation of Labor has, indeed, sometimes been misstated. The term "trade autonomists," which is applied to them, is also misleading. They oppose industrial unionism. But not even the most conservative of the older labor leaders who cling to the traditions and methods of the past would desire to rip apart the existing amalgamations of trades nor to forbid all fusion of craft unions in the future. They favor the amalgamation of closely related trades, but are inclined to broaden very slowly their interpretation of the words "closely related." They have been especially reluctant to encourage the absorption of unskilled workers by an organization of the skilled, or to sanction the distribution of a craft employed in several industries among a corresponding number of industrial unions.

In times past the American Federation of Labor has been opposed to certain alliances of related trades, notably the International Building Trades Council. It opposed the latter organization, not because it objected to such coöperation between related trades, but because the International Building Trades Council refused to affiliate with it and yet was settling jurisdictional disputes in the building trades, maintaining sympathetic strikes, and fulfilling other functions which were being performed, in part at least, by the American Federation of Labor. The president of the American Federation of Labor made a sweeping assertion at the convention in 1901 regarding this conflict of function. "There is nothing," he said, "for which the International Building Trades Council can declare which has not been more effectually exercised and more clearly achieved by the American Federation of Labor." Such a statement is an exaggeration, since the group of related trades has interests in common which a general labor federation will not promote. Nevertheless, the allegiance

<sup>1</sup>One of the associations known as the Industrial Workers of the World has headquarters in Chicago and the other has headquarters in Detroit. The latter broke away from the parent organization in 1908 to form a rival federation bearing the same name.



of some of the national unions of the building trades was very probably weakened by their greater interest in the independent federation of the trades in their own industry. The American Federation of Labor contented itself at first merely with opposition. A more constructive policy was inaugurated in 1903 when the Metal Trades Federation, composed of machinists, blacksmiths, patternmakers, iron-molders, and other metal trades, was made a department of the American Federation of Labor. Subsequently, a building-trades department, a mining department, and a department of railway employees were created. Only the railway shop crafts are at present united in the railway employees' department, but the ultimate purpose is to combine all railway employees.

Recently the party in control of the American Federation of Labor has shown a tendency to pursue a more liberal policy regarding the organization of the unskilled. This is illustrated by the efforts to form unions of migratory and other unskilled workers and by the sanction given in 1912 to the plan of the shingle weavers to include all workers, skilled and unskilled, in the lumber industry.

The majority in the American Federation of Labor are still opposed to industrial unionism. For some time, however, there has been a steadily increasing minority desiring industrial unionism, and at recent conventions of the general labor federation they have maintained a strong though unsuccessful fight for the adoption of resolutions favoring that method of organization.

Should the amalgamation of related trades include all or only a part of the crafts in an industry? Should the government by which such related trades are united be a centralized amalgamation practically identical with that of the national craft unions which it replaces, or should it be a loose alliance or federation in which the national craft unions continue to retain their existence? To answer these questions we must consider, first, the reasons for uniting related trades; secondly, the relative advantages and disadvantages of centralized amalgamations and loose confederations; and, thirdly, the kinds of related trades which have tended to unite.

An important reason for uniting a group of related crafts has been the need of coöperating to maintain strikes against a common employer. Strikes are much more effectual if all wage-earners in industrial establishments, including many not affected by the dispute, may

be ordered to quit work simultaneously. When the great strike in the meat-packing houses of Chicago was declared in the summer of 1904, the stationary engineers and stationary firemen, who have separate organizations from the other employees, remained at work. Had they quit, the strike would not have failed, say the leaders of the Amalgamated Meat Cutters and Butcher Workmen. With a large supply of meat in the refrigerators to satisfy current demands, the packers could view with equanimity the prospect of a cessation of work for many days. But if the stationary engineers and the stationary firemen had struck and so closed down the ice plant in the refrigerating department, they would have had to make terms within a few hours. The engineers and firemen did apply to their organizations for consent to strike in sympathy with the butchers, but some days elapsed before permission could be obtained. When they did finally strike, the packers, anticipating such a movement, had already secured engineers and firemen to take their places.

Again, strikes of employees in a single department of a factory often fail because the employees in other departments can be kept busy by having the work of the strikers done in some other establishment. For example, if the compositors in a printing office declare a strike, but the printing-pressmen remain at work, the publisher may have his composition done by nonunion workers in some other office, the forms or stereotyped plates being handled by his own pressmen. Employers united in opposition to the union frequently put themselves to considerable inconvenience to help one another in an emergency. It was the desire to put an end to such practices on the part of employers which led to the amalgamation of three national unions of iron and steel workers in 1876. When the iron-boilers and puddlers went on strike, the heaters and rollers were kept at work by supplying them with muck iron made by nonunionists in other places. For this reason the great Pittsburgh strike of boilers and puddlers failed in 1875; and, because of its failure, this group of workers, highly skilled, strongly unionized, and withal much inclined to hold aloof "from entangling alliances," was converted to the plan of amalgamating all trades in the iron and steel mills into one union.<sup>1</sup>

<sup>1</sup>*National Labor Tribune*, Pittsburgh, January 2, 9, April 10, 1875.

Without coöperation between the related crafts in an industry, strikes of a single trade fail because, in order to keep the plant in operation and thus remain employed, the members of other trades do the work of the strikers or instruct nonunionists how to do it. Thus, in times past, locomotive firemen have run engines during strikes of locomotive engineers; and locomotive engineers, on their part, have taught strike breakers how to perform the duties of locomotive firemen. Undoubtedly, unions would be able to bargain much more effectively for better working conditions if the agreements or contracts of all trades in an establishment expired at the same time, if the demands of the several trades were presented jointly to an employer, and if a refusal to comply with these demands caused every employee in the establishment to quit work.

On the other hand, strikes of a single trade which cannot be readily replaced are unfair to the other related trades in the industry, since such a single trade, even though composed of only a handful of journeymen, can often shut down a large plant and throw out of employment hundreds of workmen who have no voice in the matter. One reason why the International Typographical Union wishes to retain control over the machinists in the printing office is because a strike on their part may abruptly halt all activities and throw the other workers out of employment.

Strikes of a single trade are unfair to the group which wages them when other workers in the factory who have not helped to win the strike must share the fruits of victory. If a group whose presence is necessary for the running of a factory labors only eight hours a day, the other employees must also suspend work at the end of the eighth hour. In consequence, when the trades in an industry are organized into separate unions, one of them may bear the brunt of a long and severe struggle to secure improvements which will also benefit the others.

A group of trades which jointly produce a single article benefit greatly by uniting to boycott "unfair" firms and to extend, by means of the union label, the sale of goods made in "fair" shops. Attempts of each trade to maintain independent boycotts cause much confusion. Thus, the printing-pressmen may be urging the public not to buy the newspaper of a publisher, while the printers, to whom the same publisher has accorded excellent conditions, may be urging

the public to buy it. One reason why the brewery workmen became enthusiastic advocates of the so-called "industrial union" was because of the conflict in maintaining boycotts which occurred when the various trades were organized into separate associations. Similarly, when each trade in an industry has a separate label, conflict is inevitable. Thus, if one of the trades in a particular factory is organized and the others are not, the union of the unorganized trade will object to the efforts of the organized union to extend the sale of the goods made in that factory by means of the union label. The various organizations of boot and shoe workers amalgamated in 1895 because of the great need of cooperating to maintain a single label.<sup>1</sup> After four trades in the printing industry had split off from the International Typographical Union, local alliances of the printing trades in each community became necessary, primarily to promote harmony in the use of the union label.

Another reason for amalgamation and federation of related trades is the movement of workers from one craft or division of a craft to another. Instances of crafts whose members are recruited from other trades are numerous. The ranks of the locomotive engineers are replenished from the locomotive firemen. A railroad brakeman may become later a railroad conductor. The pressman's assistant rises to the position of printing-pressman. The cigar-maker of ability learns enough concerning the varieties of tobacco and the making of the cigar to do the work of the cigar-packer. Many carpenters and cabinetmakers enter the craft of patternmaking. In the large meat-packing houses, in the coal mines, in boot and shoe factories,<sup>2</sup> and in other industries division of labor is lessening the amount of skill required, and journeymen pass readily from one kind of work to another. Under such conditions the various groups of workers must combine to control the supply of the labor in the industry and to prevent disastrous competition for employment between members of different unions. The combination of related trades solves also the difficulty created by the refusal of journeymen who change their

<sup>1</sup> *The Laster*, Lynn, June 15, 1891, p. 2.

<sup>2</sup> The Boot and Shoe Workers' Union adopted the following in 1904: "Members working at one branch of the trade are entitled to change to another branch, provided the local union having jurisdiction over that branch cannot fill the position with one of its members" (*Shoe Workers' Journal*, Boston, February, 1904, p. 37).

trade to sever their connection with the union of their former craft in order not to lose the right to its sick, death, and other benefits. Thus, many locomotive firemen after becoming locomotive engineers retain their membership in the union of the locomotive firemen. The Brotherhood of Locomotive Engineers pays benefits of adequate amount, but the average age of its members is higher than the average for the union of locomotive firemen, most of whose members are young men. Hence the death and disability rate of the Brotherhood of Locomotive Engineers is larger and the cost of maintaining its benefits is greater. Because of this additional cost, young locomotive firemen who have received their promotion are reluctant to join it. When railway conductors become too old to perform their responsible duties efficiently they are often employed by the railroad company as switchmen. These men are frequently too old to become beneficiary members of the Switchmen's Union and they insist on retaining their membership in the Order of Railway Conductors. Of course when part of the members of a trade belong to one organization and part to another, their ability to bargain effectively with employers is greatly lessened.

Another advantage of amalgamation and federation of related trades is that it reduces the number of jurisdictional disputes concerning the right to do certain work. To be sure, trade amalgamation has caused many jurisdictional disputes as to membership, since many of the old craft unions have waged a bitter conflict against the new industrial organizations which have attempted to absorb them. But such disputes over membership must be distinguished clearly from disputes over work which arise because of the difficulty of making clear-cut divisions of labor between the various trades which coöperate in production. Thus, not only do the masons lay granite and other kinds of stone but sometimes they also cut them. The granite-cutters not only cut granite but sometimes they also lay it. In a small town the same man often combines the trades of bricklayer, mason, and plasterer, or those of plumber, steam fitter, and gas fitter. Even in large cities the bricklayer or the plumber may do the work of related trades when he cannot find employment in his own. The brewer and the brewery driver must handle cooper's tools in an emergency, and the cooper in the small establishment does the work of the brewer when there is not sufficient cooperage to keep

him busy. In the small retail store, clerks drive wagons and go out for orders when occasion demands. On the other hand, many a driver fills at the store the orders which he has taken during the morning and then delivers the goods to customers. Such men frequently receive a higher wage than either the driver or the ordinary clerk. The introduction of machinery, the use of new materials, and new divisions of labor are upsetting carefully established trade boundaries and are giving opportunity for a plentiful supply of jurisdictional disputes. The increasing use of cement has created a new group of journeymen, the cement workers, who are waging a war of words with the bricklayers about the right to lay artificial stone made of cement. Another comparatively new group, the ceramic, mosaic, and encaustic tile-layers, are engaged in a controversy with the bricklayers as to which of them shall lay tile. The bricklayers, the tile-layers, and the cement workers all claim the right to lay tile made of cement. Instances might be multiplied.

When two related trades are organized into separate unions each demands a careful demarcation of its work and a strict observance of the boundaries thus set. Such a rigid division causes great inconvenience both to employer and employee and in many instances is impracticable. If after long negotiation a satisfactory dividing line is fixed, the adoption of new methods of production is apt soon to upset the arrangement. The result is an endless controversy with all the disastrous consequences which follow in the trail of such internal conflicts.

On the other hand, if both trades are united in the same union, one of them may often do the work of the other without causing a serious dispute. If a dispute does arise, it can be effectively settled when referred to a common organization whose decision is final for both parties. In England, where the stonemasons and the granite-cutters are federated in the same union, there exists no controversy between them as in the United States, where they are divided into separate organizations. To be sure, disputes do exist between American bricklayers and masons who are united in the Bricklayers' and Masons' International Union, but in places where such disputes have arisen harmony has usually been restored by the committee on general good, which federates all local societies of the two trades throughout the community. If this committee cannot settle the controversy

it is referred to the international union, "which administers justice," says an official of the society, "and prevents another Cain and Abel episode." Jurisdictional disputes have been serious blots in the history of many American trade-unions, and an important argument in favor of trade amalgamations is the possibility that they will prevent one large class of such disputes.

An objection to trade amalgamations is that while related crafts have many interests in common, they have other interests which may diverge widely or may directly conflict. The difficulty of harmonizing these diverging or conflicting interests is increased when one trade outnumbers all the others added together, since the group having the majority is apt to use the amalgamation to further its own concerns at the expense of the others. Thus, in the United Association of Journeymen Plumbers, Gas Fitters, Steam Fitters, and Steam Fitters' Helpers, the gas fitters and steam fitters, who are outnumbered by the plumbers, complain that often they are not given opportunity at local and national meetings to discuss matters affecting their own trades and that when given an opportunity they are outvoted by the plumbers. They declare that most of the funds are expended in behalf of the plumbers, and that most of the legislation adopted is favorable to that trade. The stonemasons make a similar complaint against the bricklayers. The printing-pressmen and members of other trades in the printing industry affirm that they seceded from the International Typographical Union because the compositors, who preponderated greatly in numbers, gave too little attention to the interests of the other crafts.

This weakness of the trade amalgamation has arisen largely from the failure to provide in its form of government for the fact that it is a federation of distinct groups. The transition from craft unions to trade amalgamations has frequently been so gradual that workmen have not been acutely conscious of the need for changing the structure of their organizations. Usually the constitution of the old craft union has been taken over bodily, often without amendment, by the new amalgamation. In most organizations the national officers have, sooner or later, been given authority to organize each trade or division of a trade in a community into a separate local union whenever conditions warrant; but desiring to secure the economies of the large local union, they have been slow to exercise

this discretionary power. Frequently, also, each trade is given carefully weighted representation on executive boards, conference boards, and other governmental bodies. Undoubtedly harmony between the related trades may be greatly promoted by such provisions, but, when identity of interest is slight and divergence or conflict of interest is great, some loose form of federation or alliance may be desirable.

Temporary alliances and loose federations of unions of related trades are by no means uncommon. Indeed, there are to be found all degrees of centralization, from temporary coöperation for some specific purpose to complete amalgamation. Temporary coöperation usually takes the form of a sympathetic strike. Very probably there is no agreement to help one another. Simply, the union of one trade, on becoming involved in a dispute with employers, calls for aid from other workers in the industry, and the latter respond by agreeing to engage in the conflict. A more advanced stage in coöperation is reached when there is a definite permanent agreement to help one another. An example of such an agreement is that between the wall-paper machine printers and color-mixers and the print-cutters who make wall-paper prints. By the terms of this agreement the printers and color-mixers promise not to use prints made by nonunion print-cutters, and the print-cutters promise not to work for jobbers supplying wall-paper manufacturers whom the printers and color-mixers have declared to be unfair.

Such promises of two organizations to aid one another are unsatisfactory, however, if governmental machinery is not established for the purpose of making joint decisions and taking joint action concerning matters affected by the terms of the agreement; and this is particularly the case if the agreement provides for coöperation by means of sympathetic strikes. In the first place, unless there is a joint tribunal to decide as to the expediency of engaging in the conflict by one of the affiliated crafts, sympathetic strikes are usually ineffective. When the union of one trade notifies the other only after the struggle has begun, there is often a long delay while the request to strike in sympathy is being considered by the national officers or perhaps by each local society of the related craft. Frequently, indeed, a strike of one union is practically lost or won before the members of another union decide to quit work.



A second result of the lack of coöperation during the preliminary stages of a dispute is that it deprives one union of the opportunity to prevent inexpedient or unwise strikes desired by another. When the strike has already begun, and when the refusal to help means its failure, a strong sense of obligation may force the members of a related trade to engage in the struggle against their will.

A third objection is that unless the related trades bargain jointly with employers and make joint agreements, the policy of waging sympathetic strikes increases the number involved in each conflict without reducing the number of such conflicts. For example, the carpenters engaged in the construction of a building declare a strike for higher wages, and the members of every other trade on the building quit work in sympathy. When this trouble has been adjusted, the plumbers discover that the employer has violated his agreement with them, and all trades again go on strike. Next, the elevator constructors and the hoisting engineers quarrel as to which of them shall run the completed elevator. The other trades take sides, and all building operations are suspended until the dispute can be settled. Then the business agent of the plasterers' union finds that his trade has a grievance and orders everyone to leave the building. This is not a very exaggerated picture of conditions in the building industry as they existed in Chicago just before 1900 or in New York during the spring and summer of 1902. Building operations were seriously demoralized. The time for the ultimate completion of a building was a matter of gamble, with all odds in favor of delay. Building contractors, landlords, and the general public joined in a chorus of protest against the arbitrary methods of the unions.

A fourth result is to place the unions in the position of breaking their contracts. Perhaps an employer has granted favorable terms to a union, which agrees on its part to maintain industrial peace for one or more years. Then this union becomes involved in a sympathetic strike to help another trade and violates its agreement. To aggravate the offense in the eyes of the public and the employer, the members of the union meddle in a dispute which is apparently none of their concern.

Coöperation between unions of related trades reaches a much higher stage of efficiency when governmental machinery is provided

to carry out the terms of the agreement. Sometimes the existing officials of the contracting unions are utilized for this purpose, as, for example, in the "tripartite agreement" for the regulation of sympathetic strikes by the unions of printers, pressmen, and book-binders in 1896. By the terms of this agreement the presidents of the three international unions visited in person the place where a joint strike was demanded or sent a representative to effect a settlement if possible. When the dispute could not be amicably settled, each president referred the matter to the executive board of his own association. The three executive boards were equal in size, and a majority of the three taken together could declare a joint strike. Sometimes special governmental machinery is created to carry out the terms of the agreement between two or more unions. Thus the wall-paper machine printers and color-mixers and the print-cutters have created a joint national committee to control joint strikes and joint agreements in every establishment where the wall-paper manufacturer makes his own prints; in other words, where the two trades have a common employer.

Even greater unity between the related trades is attained when a permanent federal government is created not to perform some particular function specifically provided for in the written agreement but to perform any function which the unions represented in the federation may jointly decide, from time to time, to be desirable. Federations of related trades are either local, national, or international, the so-called international unions having branches in Canada. Local federations were formed before national or international ones. Thus, while the International Building Trades Council was created only in 1897, local federations of building trades existed as early as 1882 or 1883 in New York, Chicago, Baltimore, Cincinnati, and other large cities.<sup>1</sup> Movement of workers from one city to another, competition between employers in different places, and other causes which brought about the combination of local into national craft unions have likewise operated to superimpose national upon local federations of related trades.

National federations of related trades have been either combinations of national craft unions or combinations of both local allied-trades councils and national craft unions. In the second instance either of

<sup>1</sup> *The Carpenter*, New York, May, 1882, June and August, 1883.

the two kinds of constituent bodies may predominate, according to the method of representation at the convention of the national federation. Thus, at conventions of the International Building Trades Council the local councils of allied trades outvoted the national trade-unions until 1905, because each one of the two kinds of organizations was allowed the same vote. On the other hand, at conventions of the National Metal Trades Federation the national craft unions, whose voting power varied according to membership, preponderated over the local councils of related trades, each of which had only one vote. The national trade-unions claim that when outvoted in federations of related trades their power over subordinate societies is greatly weakened. Prominent officials of the carpenters, bricklayers, granite-cutters, plumbers, and other building trades opposed the International Building Trades Council for this reason. Not all of the national trade-unions in the building industry were affiliated at the time with the International Building Trades Council, but the local allied-trades councils would still have predominated even if all of them had been represented. The national craft unions in the building industry have always been decentralized, and the ability of their central governments to control subordinate societies was still further lessened when these subordinate branches relied no longer on the central government for financial and moral support in time of strikes, but secured whatever aid they needed from local and national building-trades councils. To check this tendency towards decentralization, those opposed to the International Building Trades Council organized in 1904 the Structural Building Trades Alliance, composed only of national trade-unions. Local allied-trades councils were not permitted representation at its conventions. In 1905, too late to prevent the successful launching of the rival federation, the International Building Trades Council modified its policy by granting to the national craft unions a voting power proportionate to membership, while continuing to allow each local allied-trades council only one vote. At present the federation of related trades dominated by local allied-trades councils is discredited. Such local councils may be given representation at the federal convention, but the national craft unions retain the controlling vote.

The amalgamation is the most centralized form of combination between related crafts; but, like the national trade-union, it is a

federation of local craft organizations, and, as already pointed out, its machinery of government is in most respects the same as that of the national trade-union.

The degree of centralization desirable for combinations of related trades depends on the number of interests which they have in common and the number which conflict. The administration of their common interests grows more efficient as they become more centralized; but the opportunity for friction regarding matters of conflicting interest increases also. Thus the government of the amalgamation is more efficient than the federation of local allied-trades councils or of national craft unions. It has direct control over the local craft unions and thus can compel more prompt and faithful compliance with its commands than can the federation, which must issue orders through intermediate organizations. On the other hand, friction is more likely to arise, because matters concerning one craft alone are not left to the organization of that particular craft but are considered by a joint convention or joint executive board on which all the related crafts are represented.

Before determining the kinds of related trades which should be federated or amalgamated, let us first consider the kinds which are at present actually united. Amalgamations and federations of related trades may be divided broadly into (1) those combining trades working for the same employers and (2) those combining trades working usually for different employers. Illustrations of the first are the union of employees in carriage and wagon factories, the union of employees in cigar factories, and the many other trade amalgamations whose members work together in the same industrial establishments. An example of the second would be an organization uniting the makers of handsaws with the carpenters who use them. These two trades never have the same employers, yet the possibility of combining them has been considered.

1. Combinations of trades working for the same employers may be subdivided as follows:

a. Industrial unions claiming jurisdiction over every group of workers in an industry, including the unskilled and certain well-defined auxiliary trades, such as the stationary engineers, the stationary firemen, and the teamsters, who are found in many other industries. The number of industrial unions is small. A few have

recently been formed as departments of the Industrial Workers of the World. The most important of the older ones are the United Brewery Workmen, the Western Federation of Miners, the United Mine Workers, and the Quarry Workers' International Union.

b. Unions which include only part of the related trades in an industry. To this group belong most of the American unions. Auxiliary crafts found in other industries are admitted by a few of these organizations. Thus, the International Typographical Union, which embraces compositors, proofreaders, and mailers, is engaged in controversy with the International Association of Machinists concerning jurisdiction over the linotype machinists. The theatrical stage employees dispute the claim of the union of carpenters and joiners to control the stage carpenters and the claim of the Brotherhood of Electrical Workers to control the stage electricians. As a rule, however, auxiliary crafts are excluded, and so are, usually, the unskilled workers. Some of the unions in this group unite only a very small proportion of the crafts in an industry. In such instances the trades combined are usually more closely related than the others. Thus, while the various crafts in the railway industry have always been disunited, certain ones which are closely associated in the operation of trains are organized in the Brotherhood of Railway Trainmen. Similarly, while most of the trades in the printing industry are organized separately, the several groups of workers engaged in bookbinding are united in a single union, and so are, also, the stereotypers and electrotypers. On the other hand, some organizations in this group have acquired jurisdiction over nearly all the trades in an industry. Thus the International Seamen's Union controls all seamen except the highly skilled marine engineers, mates, and pilots, who have refused to affiliate with their less skilled fellow craftsmen. Some organizations, such as the Molders' Union, claim jurisdiction over all except the auxiliary trades and the unskilled workers. Others include the unskilled but not the auxiliary trades. Thus the Cigar Makers' International Union admits workers of all degrees of skill, from the person who selects the leaves of the tobacco to the one who packs the finished cigars in boxes. The boast of the officials of the Amalgamated Meat Cutters and Butcher Workmen of North America is that their organization makes no distinction as to skill. The expert who strips the hide from the carcass of

the steer and the common laborer who pushes a truck are both welcome as members. But, in order to escape jurisdictional disputes with other organizations, both of these unions refuse to admit auxiliary trades.

2. The second broad division of trade amalgamations, namely, combinations of crafts working for different employers, contains only a few organizations. These unite chiefly trades producing certain materials and tools with trades using them. A good example is the United Brotherhood of Carpenters and Joiners, which includes not only the carpenters and joiners employed on buildings in process of construction but also the machine woodworkers employed in mills where sash, doors, window frames, and other woodwork handled by the carpenters are manufactured. Another example was the now defunct American Railway Union, which included not only those engaged in railway transportation but also the car-builders. The great Chicago strike of 1894, which caused the destruction of this union, was waged to secure better conditions of employment for those engaged in building Pullman parlor cars.

Trades producing materials and tools have few interests in common with those using them. The two groups may, indeed, aid one another by means of sympathetic strikes. Thus the carpenters may aid the machine woodworkers by refusing to use sash, window frames, or doors manufactured by nonunionists. The wall-paper machine printers and color-mixers may aid the print-cutters by refusing to use prints cut by unorganized labor. The bricklayers may aid the brick, tile, and terra-cotta workers by refusing to lay brick made by non-union workers. But coöperation by means of sympathetic strikes is the only way by which such widely separated trades may help one another, and the expediency of even this form of coöperation seems doubtful. In the first place, the hostility to the strike declared in 1894 by the railway-transportation workers in favor of the Pullman-car builders indicated that strikes in behalf of such remotely related trades are held in much disfavor by the public, even when, as in the above instance, all parties were united in the same organization. Moreover, the employers consider that they have been treated very unfairly when their employees, to whom they have granted favorable terms, strike in behalf of a trade with which neither party has any personal relations. Combination between such remotely related trades

seems undesirable. If they do attempt to combine, federation or merely a written agreement would be preferable.

A small group of unions, some of which unite trades never having the same employer, are those attempting to combine all workers making goods from the same material. Frequently the manufacturers of one article do not produce other articles from the same material. Their employees compose an entirely separate trade and are never associated in the same industrial establishment with the workers on the other articles. An example was the Amalgamated Rubber Workers' Union, which was composed of workers on all kinds of rubber goods, such as parts for mechanical appliances, bicycle tires, automobile tires, and rubber shoes. The men who make rubber tires for bicycles and automobiles possess no special facility for making rubber overshoes, nor do employers who manufacture rubber overshoes ever manufacture rubber goods for mechanical appliances. In fact, there is a territorial division of production. Rubber overshoes are produced largely in New England and rubber goods for mechanical appliances in other parts of the country, particularly New Jersey. The Amalgamated Rubber Workers' Union was, therefore, an unnatural combination of groups of workers having no interest in common. Its membership, indeed, was always small, and it soon went to pieces. Another example is, perhaps, the United Brotherhood of Carpenters and Joiners, which absorbed quite recently the machine woodworkers and furniture workers and is planning soon to include also the box-makers and wooden-ship builders, and which hopes some day to have jurisdiction over all woodworkers in North America. Some of the trades which the United Brotherhood of Carpenters and Joiners seeks thus to unite possess few interests in common, and there is grave doubt whether real unity could ever be secured by such a wide-reaching organization.

The first essential for a successful combination of related trades is, therefore, that such trades have the same employers. If, in addition, such a combination admits neither auxiliary trades nor unskilled workers, its desirability will not be questioned by trade-union leaders. In fact, the only debatable question is whether such an organization should be a federation of national craft unions or an amalgamation of local craft unions. If, as in the printing industry, the lines of demarcation between the trades are rigidly fixed; and if, because one trade

outnumbers the others, an amalgamation may disintegrate, as did the International Typographical Union; and if a satisfactory balance of power cannot be secured by carefully weighted representation in conventions and on general executive boards,—a federation may be preferable. If, as in the building industry or the railway industry, the related crafts have been long and successfully organized into separate national trade-unions, there will be much objection to the dismemberment of these associations, and the first successful attempt at combination will probably be a loose federation. If none of a group of related crafts outnumbers greatly the others, and if the divisions between trades are not rigidly fixed, so that laborers pass readily from one kind of work to another, the successful establishment of an amalgamation may be an easy task.

Two matters of long and bitter controversy that have arisen concerning combinations of trades working for the same employers have related (1) to the admission of auxiliary trades found in a number of industries and (2) to the admission of unskilled laborers. We shall first consider the method of organizing auxiliary trades. The industrial unionists favor their distribution among several industrial unions. The trade autonomists favor their combination into a single craft union. In behalf of the policy of distributing the members of an auxiliary trade among several industrial unions, it may be argued that such a craft gains much from its ability to coöperate for purposes of collective bargaining with other employees in the same establishment. Trades like the patternmakers, the stationary engineers, and the stationary firemen are especially handicapped unless the related trades aid them by declaring strikes in sympathy, for the reason that there are usually so few of these workers in each establishment that the employer can readily find sufficient nonunionists to take their places. On the other hand, coöperation for purposes of collective bargaining between members of an auxiliary craft in different industries is unnecessary. It is not even needed to maintain uniformity of wages, since such uniformity is required only between competing establishments in the same industry. In favor of combining the members of an auxiliary trade into one craft union, it may be argued that the supply of workers in a trade can be effectually regulated only when its members are so united. If distributed among several industrial unions, limitation of apprenticeship is impracticable,



and there is no way of preventing the members in one industry from taking the places of fellow craftsmen in other industries by acting as strike breakers or by offering to work for lower wages. At the same time, the free movement of the members of the trade from one industry to another is checked by the erection of artificial barriers.

Those members of an auxiliary trade who have had to undergo additional training in order to do the work in a particular industry are affected very indirectly by the total supply of workers in the craft and hence may amalgamate very profitably with other employees in the same industry. The Carriage and Wagon Workers' International Union claims that the carriage blacksmiths are specialists and hence can gain nothing from affiliation with the union of blacksmiths. The cutting-die and cutter makers, who manufacture the dies used in cutting cloth, paper, leather, and other materials according to various patterns, declare that they have no interests in common with the blacksmiths and machinists, from whom their ranks are recruited. Special training is required to do this work, and as the waste of material makes the cost of teaching new hands very high, the cutting-die and cutter makers are only slightly affected by the demand for machinists and blacksmiths.

When the members of a trade require no special training for the work in each of the industries in which they are employed, a compromise seems necessary. Trade-union officials have suggested that the members of such a trade might belong both to the craft union and to one of several industrial unions. Power to declare strikes and to bargain with employers could be vested in the industrial unions. The craft union could limit the supply of workers in trade and prevent individual competition for employment between them, and if the scope of its activities were limited to these matters there need be no overlapping of functions between it and the industrial unions.

The second question to be considered is whether the skilled and unskilled workers in an industry should be combined in the same organization. Undoubtedly the unskilled gain greatly from such an alliance. Organizations composed wholly of unskilled workers, such as the International Brotherhood of Foundry Employees, the International Association of Glass House Employees, the International Hod Carriers' and Building Laborers' Union, and the International Association of Blast Furnace Workers and Smelters, are

practically impotent to improve the conditions of their members. Since their work requires little or no training, strikes are useless. From the large standing army of unemployed, men and women can readily be secured to take their places. The International Hod Carriers' and Building Laborers' Union makes no mention of strikes in its constitution. In fact, the international organization pays no strike benefits and rarely declares a strike. The local societies of building laborers have derived the strength to maintain strikes and otherwise bargain with employers from the aid which they have secured from the skilled trades by affiliation with local building trades councils. The Laborers' Union Protective Society of New York City, composed of bricklayers' and masons' helpers, has secured favorable conditions of employment for its members only through the help of the New York local unions of bricklayers, which have declared strikes in their behalf and have secured the inclusion of provisions favorable to the helpers in their agreements with the contractors.

The formation of a vast organization of unskilled workers in all industries has been suggested by trade-union officials. The Laborers' International Protective Union, with jurisdiction over all unskilled and general laborers, male and female, was formed several years ago, but never attained any real importance. The constant tide of immigration into the United States makes any effective regulation of the supply of general laborers impracticable. Moreover, unskilled workers can be kept faithful to the union only with great difficulty. During unemployment, which is very frequent among them, they are expelled for failure to pay dues, for acting as strike breakers, or for selling their labor at less than the union scale of wages. Those advocating one large organization of unskilled workers suggest the payment of sick and out-of-work benefits to prevent the members from breaking away from the union when in economic distress. But the ability of these workers, with their low wages and frequent unemployment, to maintain such benefits seems doubtful.

The chief hope of the unskilled workers rests in an alliance with the skilled, but the skilled gain nothing by such an alliance. On the contrary, such amalgamation entails a sacrifice, since it imposes on the skilled the obligation of fighting battles in behalf of the unskilled. The keynote of the dominant unionism has been self-interest. The

consistent pursuance of this policy by the American Federation of Labor and its constituent international unions has made them succeed where the Knights of Labor, with its altruistic ideals of brotherhood, failed. Following this policy, the skilled trades have refused to unite with the unskilled.

There are aristocracies even among the aristocrats. Certain trades, whose members possess a higher degree of efficiency and training than do their fellow employees, have refrained from entangling alliances. The exclusiveness of the locomotive engineers has undoubtedly helped to prevent the successful federation of all railway employees. The bricklayers have held aloof from local and national federations of the building trades. The marine engineers have refused to affiliate with the International Seamen's Union. Years ago the window-glass blowers and gatherers were reluctant to amalgamate with the less skilled window-glass cutters and flatteners. Today the situation is reversed. The introduction of machinery has greatly reduced the skill of the blowers and gatherers, and the cutters and flatteners, who now possess the greater skill, have seceded from the amalgamation of window-glass workers to form an independent organization. The lasters were for some years the aristocrats among the boot and shoe workers. The introduction of machinery greatly reduced the skill of all boot and shoe workers except the lasters. About 1885 the lasters formed a strong union, while the other trades were unorganized or maintained weak, struggling unions. In consequence, the lasters gained at the expense of the members of other crafts, for the employers, fearing to provoke them to resistance, permitted their wages to remain the same when reducing those of the other trades and even secured reimbursement for increases in the wages of the lasters by imposing reductions on those of the other crafts. Similarly, the cotton mule spinners were able for many years to obtain high wages at the expense of the other unorganized groups of workers in the cotton industry.

Introduction of machinery and further division of labor have forced many of these highly skilled trades from their position of aloofness. With the replacement of the mule by the ring frame, which can be manipulated by women and children, cotton mule spinning has become a vanishing craft. After 1890 the new lasting machinery greatly demoralized the lasters' unions. Certain processes could be done by

boys, and one could pass fairly rapidly from the easy to the more difficult parts of the work. The lasters were, therefore, quite willing to join with the other trades in forming a single amalgamation of boot and shoe workers in 1895.

This breaking down of the barriers between trades is bringing about for the most part, however, only the amalgamation of groups whose work requires some degree of skill. The unskilled, who are most helpless, remain largely without effective organization. Nevertheless, as division of labor becomes more minute, as the old method of apprenticeship fails, and as the groups of skilled and semiskilled are being recruited in an increasing number of instances by the promotion of the common laborers required for the many odd jobs existing in every industrial establishment, the other trades are manifesting a growing tendency to admit such potentially dangerous competitors to their unions. Thus the plumbers and the steam fitters, the boiler-makers, the tile-layers, the blacksmiths, the pressmen, and some other trades admit their helpers to membership in their unions, because, while these helpers are not apprentices, they have opportunity to learn the trade and often become efficient journeymen. The Amalgamated Meat Cutters and Butcher Workmen of North America admits workers in the meat industry, irrespective of skill; and in 1904 all classes of employees in the Chicago packing houses went on strike to raise the wages of the least skilled and most poorly paid, the reason being that labor has been so minutely subdivided in the packing houses that the immigrant can be trained in a few months to even the most difficult of the processes. Some of those who are handling trucks and doing other odd jobs have been displaced from more skilled positions. They can slaughter and cut up the whole ox, hog, or sheep, and would be glad to regain their old positions at less wages than those now holding them are receiving. Moreover, the wages of all employees in the packing houses bear a fixed proportion to the amount paid to the least skilled. So the Amalgamated Meat Cutters and Butcher Workmen desires control over the general laborers, and declared the strike of 1904 in their favor to keep them satisfied with their present employment and indirectly to raise the wages of the more skilled employees. Instances in which the self-interest of the skilled workers demand their amalgamation with the

unskilled are still rare, however. If common laborers are admitted in the near future to unions of other workers in the same industry, they will be admitted not from self-interest but from more altruistic motives, from a growing spirit of class consciousness attended, perhaps, by a correspondingly growing realization of class responsibility.

THEODORE W. GLOCKER

UNIVERSITY OF TENNESSEE

## XXVII

### THE DOMINANCE OF THE NATIONAL UNION IN AMERICAN LABOR ORGANIZATION<sup>1</sup>

TRADE-UNIONISTS in all industrial countries have developed a number of distinct forms of grouping. At the present time, for example, American trade-unionists are organized into local trade-unions, national trade-unions, city federations, a national federation, local trades councils, and national trades councils.<sup>2</sup> The same unionist may be included in all of these six forms of grouping. A Baltimore printer, for example, may be a member of the local union of his trade—the Baltimore Typographical Union; of the national union of his trade—the International Typographical Union; of the city federation—the Baltimore Federation of Labor; of a national federation—the American Federation of Labor; of a local trades council—the Baltimore Allied Printing Trades Council; and, finally, of a national trades council—the International Allied Printing Trades Association.<sup>3</sup> Each of these forms of grouping might, therefore, embrace all the trade-unionists in the United States. As a matter of fact, some of them include in their membership only a small part of the total number of trade-unionists. The number of members of all the local trades councils in the United States, for example, is probably less than one fourth of the total number of trade-unionists.

<sup>1</sup> From the *Quarterly Journal of Economics*, Vol. XXVII (1913), pp. 455-481.

<sup>2</sup> There are other forms of grouping, as, for example, state federations and state and district unions of the local unions in particular trades, but these have played a relatively small part in the organization of labor in the United States and are, therefore, omitted from the present discussion.

<sup>3</sup> The terminology of American trade-union structure is much confused. The city federation, as it is called here (that is, the federation of the local unions in a city), is known by various other names; for example, "labor assembly," "trades' union," "trades council," and "central labor union." In the constitution of the American Federation of Labor city federations are denominated "central trade and labor unions" or, more briefly, "central bodies." The local trades councils, as they are called here (that is, the local unions of allied trades in a particular city), are also frequently referred to as "central bodies."

The forms of trade-union grouping have steadily increased in number. The local trade-union dates its origin from the beginning of the nineteenth century; the city federation from 1827; the national trade-union, as an effective form of organization, from 1850. Trades councils, local and national, are a development of the last twenty-five years.

The interrelations of these forms of grouping—the elements in American labor organization—have been determined slowly, and from time to time the changing needs of the trade-union movement have necessitated readjustments of these relations. As might be expected from the political analogy, the relationship which has proved most practicable has been the dominance of some one of the forms of grouping over the others. Whenever the tide of trade-unionism has risen markedly, the desire to give unity to the labor movement has led to the assumption of leadership and control by one or another of the forms of grouping. In the history of American labor organization four distinct structural forms are distinguishable, each of which emerges in a time of rapid growth in the trade-union movement. The periods in the development of the structure of American labor organization may accordingly be roughly defined as extending from 1800 to 1815, from 1827 to 1838, from 1879 to 1888, and from 1897 to the present. In the years between these periods the labor movement was relatively weak, and the relations of the various forms of grouping were less sharply defined.

In the earliest period—from the end of the eighteenth century to about 1815—the local union was the only form of trade-union grouping. Among the local unions of different trades in the same city there was no substantial connection; communication between the local unions of the same trade in different cities was rare, and coöperation among them slight.

The second period, extending from 1827 to 1838, was marked by the rise of the city federation, or, as it was then called, the trades' union. The admirable study of this period by Professor Commons and Miss Sumner shows that the labor movement of the period was largely directed and controlled by the city federations.<sup>1</sup> Attempts to form national trade-unions were made, but failed. The city federations united to form a national federation,—the National

<sup>1</sup>Documentary History of American Industrial Society, Vols. V, VI

Trades' Union,—but this exercised practically no power and its life was short.

A characteristic feature of American trade-unionism from 1865 to 1888 was the formation of a number of national federations in which the controlling elements were the city federation and, to a less extent, the local union. The International Industrial Assembly of North America, organized in 1864, the National Labor Union, active from 1866 to 1870, the Industrial Congress, organized in 1873, and the Knights of Labor, organized as a national federation in 1878, were alike in this respect. These national federations were designed to exercise functions distinct from those exercised by the national and local unions, but the evident desirability of bringing the entire labor movement into unity led in the latest and strongest of these organizations, the Knights of Labor, to the gradual development of the idea that the national federation should be dominant in the structure of labor organization. The opposition of the national trade-unions to a structural form in which the national union became subordinate to the national federation led to the bitter struggle between the Knights and the national unions which characterized the years from 1885 to 1888.

The fourth period in the structural history of American trade-unionism—from 1897 to the present—has been distinguished by the increasing control exercised by the national trade-union over the other forms of grouping. This development, which forms the subject of the present paper, will be treated with reference to (1) local unions, (2) national federations, (3) city federations, (4) local and national allied-trades councils.

## I

The present dominance of the national union in American labor organization is based upon the steadily increasing control exercised by the national unions over the local unions. This development presents two aspects. In the first place, the degree of control which the national union exercises over its affiliated local unions is important, since both the power and the desire of the national union to control the other forms of labor organization are directly proportional thereto. Secondly, the extent to which local unions are affiliated with some national union is also important, since if a large part of the



local unions were independent, the power of the national union to control the other forms of labor organization would be much less than it is.

In both respects the control of the national unions over the local unions has increased rapidly in recent years. The increase in the degree of control over the affiliated local unions—ordinarily described as centralization—has been due to a variety of causes, chief among which are the establishment of nationally administered beneficiary features, the financing of strikes by the national unions, and the negotiation of national agreements with employers. These extensions of activity on the part of the national union have necessitated an increasingly stricter control by the national union over its affiliated local unions, which has exhibited itself in many ways, such, for example, as the national regulation of admission requirements, the national control of strikes, and the adoption of national working rules.<sup>1</sup>

The extension of control by the national union over a larger and larger number of the local unions in its trade or industry is closely connected with the growth in centralization. The same considerations which lead affiliated local unions to transfer a large part of their activities to a national organization are influential in leading unaffiliated unions to ally themselves with the national union in their trade. The advantages to be obtained, however, have not been the only force making for the affiliation of the independent unions. The national unions have exerted pressure on the unaffiliated unions by discriminating against their members who seek work in other cities and, wherever practicable, by establishing rival local unions. Moreover, as will be shown below, the national unions have used their increasing control of the city federation and the local trades council to force the independent unions to affiliate.

The result has been that American local trade-unions are connected with some national union probably more generally than the

<sup>1</sup>Various aspects of this development have been described in detail by several writers. See Adams and Sumner, *Labor Problems*, pp. 228-230; Carlton, *History and Problems of Organized Labor*, pp. 95-110; McCabe, *The Standard Rate in American Trade Unions*, pp. 120-178; Wolfe, *Admission to American Trade Unions*, pp. 11-33; Spedden, *The Trade Union Label*, pp. 32-51; Sakolski, *The Finances of American Trade Unions*, pp. 12-20, 46; Kennedy, *Beneficiary Features of American Trade Unions*, pp. 106-120; Glocker, *The Government of American Trade Unions*, chaps. v, vi; Barnett, *The Printers*, pp. 29-40.

local unions in any other country. It is one of the curious phenomena of trade-unionism that although local and sectional trade-unions still survive in England, they have almost entirely disappeared in the United States, despite the enormously greater area covered. In the United Kingdom, for example, the following unions of compositors were in existence in 1910: London Compositors, Dublin Typographical Society, Typographical Association, Scottish Typographical Association.<sup>1</sup> In the United States in the same year there was no important independent local union of compositors or sectional association of such unions. All the local unions were affiliated with the International Typographical Union. Essentially the same contrast is found in a number of other trades.<sup>2</sup>

## II

As long as the national unions had slight control over their affiliated local unions they did not seriously object to the formation of national federations in which city federations and local unions were the dominant elements. With the growth of the power of the national union over the local unions, the national unions in which centralization was greatest became strongly dissatisfied with such national federations, particularly if they encroached upon the functions of the national union.<sup>3</sup>

The question did not become acute, however, until the great increase in the strength of the Knights of Labor, and the transformation in the attitude of that organization toward the national unions. In 1886 the national trade-unions, desirous of defending themselves against the threatened domination of the Knights, took over and reorganized the Federation of Organized Trades and Labor Unions

<sup>1</sup>Labour Department Report on Trade Unions in 1908-1910, p. 50.

<sup>2</sup>No data are available as to the number of independent local unions in the United States as a whole, but some indication of the number may be obtained from the annual reports made to the Massachusetts Bureau of Statistics by labor organizations in that state. In 1910, according to information kindly furnished by the Director of the Bureau, of some 1250 local unions in Massachusetts all except twenty were affiliated with some national union or with the American Federation of Labor. See also the Bureau's Fourth Annual Report on Labor Organizations, 1911, p. 76.

<sup>3</sup>For an account of the attitude of the stronger national unions towards the national federations from 1865-1885 see Kirk, *National Labor Federations in the United States*, pp. 17-26.

of the United States and Canada, a national federation which had been organized in 1881. According to the original constitution of the Federation the national unions were allowed one delegate if their membership was less than 400, two delegates if 4000, three if 8000, four if 16,000, five if 32,000, and so on. Each local trades assembly or city federation was allowed a single delegate irrespective of the number of its members. In 1882 the plan of representation was slightly altered. Assemblies of the Knights of Labor and local trade-unions were given the same representation as city federations, and state and provincial federations were allowed two delegates. In several of the sessions of the Federation prior to 1886 the voting strength of city federations and local unions was greater than that of the national unions.<sup>1</sup>

In 1886, when the Federation assumed its present title,—the American Federation of Labor,—the basis of representation was altered so as to exclude from representation all local unions of trades in which national unions existed.<sup>2</sup> This change did not entirely satisfy the national unions, since it was possible that a large number of local unions in those trades in which there were no national unions might be affiliated directly with the Federation.<sup>3</sup> Moreover, the representatives of city federations might easily have become sufficiently numerous to outvote the delegates of the national unions. A year later, in 1887, the national unions, therefore, made their control of the Federation unassailable by the adoption of the provision that if a roll call was demanded<sup>4</sup> each delegate, except those of city or state federations, might cast one vote for every one hundred members

<sup>1</sup>In 1883, for instance, fifteen of the twenty-seven delegates were representatives of local trade-unions, city federations, and state federations.

<sup>2</sup>National unions were given the same representation as before, and "each local or district trades organization or federated body not connected with, or having a National or International head affiliated with, this Federation" was allowed one delegate.

<sup>3</sup>A delegate from the International Typographical Union to the session of the Federation held in 1886 suggested in his report to his union that "local organizations in a single large city could be so strongly represented as to outnumber all the duly accredited delegates from distinctive national and international bodies" (Proceedings of the International Typographical Union, 1887, p. 66).

<sup>4</sup>In 1888 it was provided that a roll call might be demanded by one fifth of the delegates, and in 1889 the present rule that a roll call may be demanded by one tenth of the delegates was adopted.

which he represented.<sup>1</sup> The representatives of city and state federations were allowed, as before, only one vote. The delegates of local unions directly affiliated with the Federation may cast one vote for each hundred members, but the total membership of these unions is small compared with that of the national unions, and on account of the expense many of them are unable to send delegates.

By these changes the national unions were given an overwhelmingly large voting power in the Federation. The convention of 1911 will furnish an illustration. The total number of delegates present was 349. Of these, 228 were delegates of national unions, 25 of state federations, 67 of central federations, 21 of trade and federal labor unions directly affiliated, and 6 of fraternal organizations. The number of delegates of national unions was nearly two thirds of the total number, and the voting strength on roll call of the national unions was 17,104 of a total vote of 17,240. Moreover, it has become customary for the national unions to send as part, at least, of their delegation important officials of the national union. The sessions of the Federation are thus to a very considerable extent councils of the executives of the national unions.

Throughout the whole period since 1886 the national unions have been more and more firmly resolved that the trade-union movement should not be transformed into that semipolitical form which has always characterized it when the city federation and local union have had control of the national federation. On several occasions representatives of the city federations have complained at the sessions of the Federation that their voting strength is too small. In 1900, for instance, a resolution providing that each delegate from a national union should be allowed only a single vote on roll call was introduced, but was voted down without discussion.<sup>2</sup> It was proposed in 1900 that the delegates from city federations should be permitted to cast the

<sup>1</sup> In the report of the delegates from the Typographical Union to the session of 1887 the purpose in making this change was stated as follows: "The basis of representation and manner of voting prescribed by the old constitution gave central labor unions and state assemblies a vote out of proportion to their strength, and enabled the smaller bodies to exert an undue influence in the control of the affairs of the Federation. But for this fact the constitution would, no doubt, have been so changed as to admit national and international bodies only. This can be done at the next session, if desirable. . . ." (*Proceedings of the International Typographical Union, 1888, p. 157*).

<sup>2</sup> *Proceedings of the American Federation of Labor, 1900, pp. 40, 155.*

votes of local unions directly affiliated with the Federation and connected with the city federation, but this proposal also was defeated.<sup>1</sup>

In 1902 an interesting attempt was made to organize a new national federation. The Milwaukee city federation issued a circular letter calling a national convention to be composed of the representatives of city federations. The executive council of the American Federation of Labor immediately, to quote their account, "used our good offices to persuade the central labor unions and other central bodies from pursuing this mistaken course. . . ." The plan was not abandoned, however, and at the session of the Federation in 1902 Mr. Victor Berger, the delegate from the Milwaukee city federation, introduced a resolution providing for a convention of delegates from city federations in cities of over 50,000 inhabitants "to consider the conditions and evils peculiar to the large cities and dangerous and oppressive to the laboring people living therein." Despite Mr. Berger's assurance that the Milwaukee city federation "had no design to organize a body antagonistic to the A. F. of L.," a committee of the Federation reported unfavorably on the project on the ground that there were "already adequate means to promote such propaganda through the various local, central, and state bodies."<sup>2</sup> The proposed federation would have been practically identical in its composition with the long line of national federations which began with the National Trades' Union of 1834 and ended with the Knights of Labor.

The number of national unions affiliated with the American Federation of Labor has increased steadily since 1897. In 1911 the only important national unions not in affiliation with the Federation were the Locomotive Engineers, the Locomotive Firemen and Enginemen, the Railroad Trainmen, the Railway Conductors, the Flint Glass Workers, and the Bricklayers and Masons. The total membership of the nonaffiliated unions in 1911, at a liberal estimate, did not exceed 600,000, while the membership of the affiliated unions was approximately 1,800,000.

No rival national federation has been able in this period to offer effective competition. The Knights of Labor has been practically an extinct organization. The American Labor Union, organized in 1902 to promote industrial unionism, went out of existence in 1905. The

<sup>1</sup> Proceedings of the American Federation of Labor, 1900, p. 155.

<sup>2</sup> *Id.* 1902, pp. 49, 110, 205.

Industrial Workers of the World, organized in 1905 as the successor of the American Labor Union, lost in 1907 the support of its only important national union, the Western Federation of Miners, which affiliated in 1911 with the American Federation of Labor. The membership of the Industrial Workers of the World—in 1911 about 10,000—is relatively insignificant.

### III

The control of the American Federation of Labor by the national unions has not only been important in itself, but through the Federation the national unions have acquired such control as they now have over the city federations. In every time of labor unrest since 1827 city federations—known variously as trades' unions, workingmen's assemblies, district assemblies, or central bodies—have come into existence in the chief industrial centers. In the earlier periods of American trade-union history these organizations called sympathetic strikes, declared boycotts, and sustained strikers with financial aid. To many of their activities the national unions had no objection, but at other points conflict occurred. With the increasing centralization of the national unions it became intolerable that their policies should be interfered with by local federations.

The control exercised by the Federation of Labor over city federations is based on the preference shown by local unions for city federations affiliated with the Federation as against independent city federations, since the Federation can obviously not impose rules on unaffiliated organizations. In 1911 there were 631 city federations affiliated with the American Federation of Labor. The number of independent city federations is at present very small.<sup>1</sup> There have been, however, even within recent years important independent city federations, and some of these were in cities in which there were also city federations affiliated with the Federation.

The Federation has been able to attach to itself so many city federations largely through the steady pressure of the national unions on their local unions. In 1893, by a provision in the constitution of the American Federation of Labor, it was made "the duty" of all

<sup>1</sup> The secretary of the American Federation of Labor, Mr. Morrison, informs the writer that in November, 1912, in only two cities of considerable population were there independent city federations.

affiliated national unions "to instruct" their local unions to join the city federations.<sup>1</sup> The national unions, however, have consistently refused to allow any mandatory rule to be passed by the Federation requiring local unions to affiliate with city federations, although such proposals have been presented and strongly urged, particularly by the delegates from city federations, at almost every recent session of the Federation.<sup>2</sup>

Even where an independent and an affiliated city federation have existed in the same city, the Federation has been able to do nothing more than endeavor to persuade the officers of the national unions to bring pressure on the local unions in favor of the affiliated federation. In 1907 the delegate from the Brooklyn city federation introduced at the convention of the Federation a resolution which recited that there were in Brooklyn two city federations, and that a considerable number of local unions belonging to national unions affiliated with the Federation were allied with the independent city federation. The convention of the Federation instructed its executive council through the national unions to "compel" the local unions to withdraw and to join the city federation chartered by the Federation.<sup>3</sup> Two years later the delegate of the Brooklyn city federation called attention to the fact that this order had not been obeyed and asked the convention to provide specifically that if any national union refused to compel its local union to withdraw from the unaffiliated city federation it should be expelled from the Federation. The convention, however, merely reiterated its instructions to the executive council.<sup>4</sup>

It is not difficult to understand the reluctance of the national unions to make the affiliation of their local unions compulsory. If a city federation becomes unsatisfactory to a local union it may withdraw at will, or in case a city federation pursues distasteful policies a national union may even encourage or order its local union to withdraw. The local unions have, therefore, always open a way of escape. Since

<sup>1</sup> Proceedings of the American Federation of Labor, 1893, p. 4.

<sup>2</sup> In 1901 a committee of the Federation, in reporting on several resolutions which aimed at forcing local unions to affiliate, said, "Your committee reports adversely, for the reason that the Federation has not mandatory power to legislate for national and international unions" (Proceedings, 1901, p. 198).

<sup>3</sup> Proceedings of the American Federation of Labor, 1907, pp. 240, 289.

<sup>4</sup> *Id.* 1909, p. 279.

the city federation has no power to retain local unions, its conduct must commend itself to the local unions or they will leave, and the seceding unions may, if they see fit, form a rival city federation. No more effectual check on the exercise by city federations of any real power over the constituent unions could well have been devised.

Although the city federation has not yet been brought sufficiently under the control of the national unions acting through the Federation to make it appear desirable to the national unions that local unions should be forced to affiliate, a beginning in such control has been made. The first and most important step in this direction was to limit the power of the city federations to admit local unions. Under the constitution of the American Federation of Labor, until 1886, a city federation might admit local unions at its own discretion. The constitution of 1886 provided that city federations were not to admit delegates "from any local organization that is hostile to the objects of this Federation or that has been suspended or expelled by a National or International organization of their trade." The rule was amended at various times, chiefly in order to make its provisions more explicit,<sup>1</sup> but since 1897 it has been substantially in its present form.<sup>2</sup> As it now stands it reads as follows:

No Central Labor Union, or any other central body of delegates, shall admit to or retain in their councils delegates from any local organization that owes its allegiance to any other body, National or International, hostile to any affiliated organization, or that has been suspended or expelled by, or not connected with, a National or International organization of their trade herein affiliated, under penalty of having their charter revoked for violation of their charter, subject to appeal to the next Convention.<sup>3</sup>

The rule has been invoked in two classes of cases. In the first place, city federations have been required to exclude local unions which have been suspended by, or have seceded from, or are merely

<sup>1</sup>From 1888 to 1893 the rule required city federations to exclude local unions of national unions not affiliated with the Federation, but since 1893 city federations have been permitted to admit the local unions of unaffiliated national unions which are not hostile to national unions affiliated with the Federation.

<sup>2</sup>Until 1902 a city federation which disobeyed the rule was deprived of representation. Since then the charter has been withdrawn (Proceedings of the American Federation of Labor, 1902, p. 216).

<sup>3</sup>Constitution of the American Federation of Labor, 1912, Article XI, Section 1.



not attached to, the national union of their trade, if the national union is affiliated with the Federation. In 1891, for instance, the San Francisco Trades and Labor Assembly, a city federation, was suspended from further representation in the Federation because it refused to exclude a local union which had been suspended by the Brewery Workers.<sup>1</sup> The Federation has consistently required the city federations to maintain the principle that every local union should, if possible, be connected with a national union. The city federations, governed largely by local considerations, if left to themselves would frequently have offered aid and comfort to seceding and independent unions, and to that extent have contributed to the support of local as against national unionism.

In the second place, city federations have been required to exclude local unions affiliated with a national union which is not connected with the Federation and which aims to include in its membership classes of workmen which are recognized by the Federation as properly belonging to a national union so affiliated. In violation of the rule city federations have not infrequently admitted such local unions and refused to unseat their delegates when ordered to do so. From time to time charters of city federations have been revoked in particularly offensive cases and new federations formed from the local unions. There has been increasing strictness in the enforcement of the rule. In 1908 a large number of city federations admitted the local unions of a national union of electrical workers, although another national union in the same trade was affiliated with the Federation. Other city federations admitted local unions of the Flint Glass Workers, who at that time were engaged in a bitter jurisdictional dispute with the Glass Bottle Blowers, a union affiliated with the American Federation of Labor. These city federations persisted in their course after notice and were deprived of their charters by the executive council of the Federation. On appeal to the convention the council was sustained.

The national unions regard it as a well-settled principle that only one national union may have jurisdiction over a particular class of workmen. They have found that the support of city federations has been one of the chief factors in promoting and encouraging the formation of rival national unions, and they have become more and more

<sup>1</sup> Proceedings of the American Federation of Labor, 1890, p. 39.

determined that the city federation shall not lend its aid to such rebellions.

The right of a city federation to exclude a local union of a national union affiliated with the Federation has also been restricted. As early as 1897 the executive council of the Federation decided that it was improper for a city federation to expel a local union merely because its national union was involved in a controversy with another national union.<sup>1</sup> In 1901 the Chicago Federation of Labor was ordered to readmit the delegates of an expelled local union.<sup>2</sup> These decisions were not based on any specific clause in the constitution, but in 1902 a section was added which provided that a city federation might not reject the credentials of the delegates from a local union of a national union affiliated with the American Federation except on charges duly proved. The delegate or local union concerned was given a right of appeal to the executive council of the Federation.<sup>3</sup> This right has been freely used, and in 1908, when certain city federations, on account of a jurisdictional dispute between the Plumbers and the Steam Fitters, refused to admit delegates from Steam Fitters' local unions, the convention of the Federation ordered the executive council to issue a general order to all city federations that they must admit the delegates of local unions of Steam Fitters.<sup>4</sup>

The national unions have not been content merely to secure that their interests are safeguarded in the composition of the city federation. They have also gradually evolved a code of rules to be followed by the city federations in the conduct of their affairs. These rules relate to the boycott, to assessments for strikes, and to interference in collective bargaining—fundamentally important activities of the city federation.<sup>5</sup>

The initiation and support of boycotts has always been one of the chief functions of the city federation. Comprising representatives of unions of all trades, the power of the city federation as a boycotting instrument has been very great. Desirous of turning this power to their service, the national unions have yet found difficulty in

<sup>1</sup> Proceedings of the American Federation of Labor, 1897, p. 35.

<sup>2</sup> *Id.* 1901, p. 158.

<sup>3</sup> *Id.* 1902, p. 215; 1904, p. 243.

<sup>4</sup> *Id.* 1908, p. 192.

<sup>5</sup> See Burke, *History and Functions of Central Labor Unions*, p. 80.

controlling it, since city federations have not infrequently initiated boycotts which were distasteful to one or more national unions.

In 1901 a provision was inserted in the constitution of the American Federation of Labor forbidding city federations to originate boycotts and requiring them before indorsing boycotts proposed by local unions to investigate the matter and to effect if possible an amicable settlement.<sup>1</sup> On several occasions city federations have been forced, on complaint of national unions, to call off boycotts. Even yet many of the boycotts indorsed by city federations give great offense to national unions. In 1903 the delegates of the Boot and Shoe Workers' National Union introduced a resolution at the convention of the Federation that no business concern which manufactured and sold goods outside of the city in which the city federation was situated should be placed on the unfair list by the city federation without the sanction of the national union whose interests were involved. The committee of the Federation which considered this resolution recommended that only boycotts on firms doing an interstate business should be submitted to the national union concerned. After much discussion the proposed rule was defeated.<sup>2</sup> In 1904 the same subject was brought up, but the convention again showed itself reluctant to adopt a rigid rule.<sup>3</sup>

The assessment of local unions by city federations for the support of strikes has been the occasion of frequent complaint by the national unions. The stronger national unions finance their own strikes, and they strongly object to having their members required to support the strikes of local unions whose national unions are unwilling or unable to pay strike benefits. The general use of such assessments would obviously greatly weaken the hold which the national unions have on their local unions and tend correspondingly to increase the power of the city federations. On the other hand, it is felt that on certain occasions, when local interests are much involved, some power should be left to city federations to raise funds. At the session of the American Federation of Labor in 1904 Mr. MacArthur, a delegate of the Seamen's Union, proposed that the city federations should be advised that assessments ought not to be levied on the affiliated unions. The convention was unwilling to forbid all assessments, but

<sup>1</sup> Proceedings of the American Federation of Labor, 1901, p. 196.

<sup>2</sup> *Id.* 1903, p. 182.

<sup>3</sup> *Id.* 1904, p. 234.

did advise the city federations that assessments should only be levied after the question had been submitted to the membership of the affiliated unions.<sup>1</sup>

Finally, the national unions have strongly resented the uninvited interference of city federations in the negotiations between local unions and employers. National unions are not infrequently glad to avail themselves of the aid of the city federation in dealing with employers, but the stronger national unions object to any attempt on the part of the city federations to take the lead in such matters. In 1898 a section was added to the constitution of the Federation which provided that a city federation should not have authority to order a strike of any local union without the consent of the national union.<sup>2</sup> In 1906 an additional section provided that a city federation must take no part in "the adjustment of wage contracts, wage disputes, or working rules of local unions affiliated with a National or International union" unless the rules of the national union permit or unless consent is given by the officials of the national union.<sup>3</sup>

From the foregoing survey it will be seen that the city federation has been definitely subordinated to the national union. From the standpoint of the stronger national unions the city federations are merely the means of making more effective the boycott, of carrying on the propaganda for the union label, and of taking such political action as the needs of the labor movement may require. The less centralized national unions would be willing to make the city federations more important. Particularly is this true of many of the unions in the building trades. There is, therefore, occasionally some division of opinion among the national unions in the Federation as to the proper functions of the city federations, but every increase in the centralization of the national union has contributed to the sentiment in favor of the subordination of the city federation.

#### IV

The fourth form of organization, the federation of unions of allied trades, is of recent origin. Local councils were formed in the building trades as early as 1865 and in the printing trades in 1886. Councils

<sup>1</sup> Proceedings of the American Federation of Labor, 1904, p. 234.

<sup>2</sup> *Id.* 1898, pp. 68, 144.

<sup>3</sup> *Id.* 1906, p. 245.

have also been formed in the metal trades, among the railroad unions, and among the maritime trades.<sup>1</sup> It will be sufficient for our present purpose to describe the development which has taken place in the relation of the national unions of the building trades to the local and national building trades councils, since in these trades the activities of the councils have been preëminently of such a kind as to cause the national unions concern.

The local building trades councils have been an important factor in industrial disputes. They have systematically employed the sympathetic strike and have ordinarily maintained jointly the closed shop. For many years their activities were unsupervised by any national authority. In 1897 a considerable number of local building trades councils formed a national organization known as the International Building Trades Council. In 1903 it comprised seven national unions and seventy-six building trades councils. The affiliated national unions were, for the most part, small unions, since the larger unions were from the outset strongly opposed to the International Building Trades Council. In the annual convention of that body each local council originally was entitled to one vote for each trade in the council. A single local council might, therefore, cast ten or fifteen votes, but a national union was allowed only a single vote. In 1904 and 1905 changes were made in the constitution with a view to giving the national unions greater weight in the conventions, but the national unions were far from satisfied. In 1903 a few of the larger national unions in the building trades organized the Structural Building Trades Alliance. The convention of the Alliance was composed exclusively of delegates from national unions. The organization of the Alliance greatly weakened the International Council, and for some years the latter has been unimportant. The Structural Building Trades Alliance was transformed in 1908 into the Building Trades Department of the American Federation of Labor.

The annual convention of the Building Trades Department, the final authority in its system of government, is composed of delegates from the affiliated national unions. Attempts have been made from time to time to secure the admission of delegates from the local councils, but these attempts have always failed. In 1909 delegates

<sup>1</sup> Kirk, *National Labor Federations in the United States*, pp. 80-88.

from certain councils were allowed the privilege of participating in the discussion but not the right to vote. In 1910 the convention refused to admit delegates from local councils.<sup>1</sup>

The Building Trades Department has not been very successful as yet in bringing the local councils under control, but a brief survey of its efforts will indicate the points at which the national unions desire to curb the activities of the local councils.

The national unions have been particularly desirous of putting an end to the encouragement given to demarcation disputes by the councils. Until the formation of the Department a council was entirely at liberty to recognize the claim of either of two contending unions to a particular class of work. They might, for instance, expel the local union of Stone Cutters on complaint of the Granite Cutters and thus lend their aid to a particular adjudication of the question of jurisdiction. When one considers that there are over two hundred building trades councils in the United States, and that their decisions are given in view of local conditions and not infrequently are the result of coalitions among the various local unions which have jurisdictional disputes, the resulting confusion can be readily conceived.

From the time of its organization the Department has endeavored to establish the principle that a local council has no power to decide a demarcation dispute. In 1909 the executive council of the Department in its report to the convention said:

Your Executive Council has taken the position that jurisdiction lines are laid down by International organizations, and as such they can only be altered, amended, or waived by duly accredited representatives appointed by each International union acting in a general way, and thereafter such amendments, changes, or conditions must be ratified by the Executive Committees of the Internationals in interest.<sup>2</sup>

At the session of the Department in 1908, when the old controversy of the Plumbers and the Steam Fitters came up, Mr. Duffy, secretary of the United Brotherhood of Carpenters and Joiners and a delegate from that union to the convention of the Department, said:

I believe every organization represented here has had men involved in strikes with Plumbers on one side and Steam Fitters on the other. Now we are coming down flat-footed to tell you that the Central

<sup>1</sup> Proceedings of the Building Trades Department, 1910, p. 96.

<sup>2</sup> *Id.* 1909, p. 36.

Bodies and the local unions affiliated with them must not take any part in the future in these fights that may arise over jurisdiction. . . . We not only say must, but you are ordered by this convention to come together.<sup>1</sup>

On numerous occasions the executive council of the Department has forced local councils to readmit local unions of affiliated national unions which had been expelled on account of demarcation disputes.<sup>2</sup>

Before the establishment of the Department local councils frequently admitted to membership local unions which were independent of any national union and local unions affiliated with national unions which were rivals of recognized national unions. Countenance and encouragement were thus given to the formation of independent and "dual" organizations. In the building trades, because of the local character of the industry, such independent and "dual" unions have been easily formed and in some cases have flourished for many years. The executive council of the Department decided in 1908 that local councils might admit to membership local unions of national unions not affiliated with the Department, but only if the "claims of jurisdiction in no way conflicted with the locals of any affiliated union," and this decision was affirmed by the convention.<sup>3</sup> In 1909 the Newark Building Trades Council was forced to unseat the delegates of "dual" unions of Tile Layers and Hod Carriers. In the same year the president of the Department reported that the number of independent unions of Hod Carriers was so large that the national union should be reorganized under the auspices of the Department, and this was finally accomplished in 1910.<sup>4</sup> A year later local councils were ordered to unseat delegates of the "dual" local unions of Electrical Workers.<sup>5</sup>

The national unions in the building trades have not attempted to bring the local councils under control to any considerable extent except with reference to the admission and exclusion of local unions. It was provided in 1899 that local unions when making a demand for an increase of wages or a reduction of hours must secure the approval of their national unions as well as of the council. But the constitution of the Department from the outset has set forth that

<sup>1</sup>Proceedings of the Building Trades Department, 1908, p. 68.

<sup>2</sup>*Ibid.* pp. 9, 16.

<sup>4</sup>*Id.* 1909, pp. 65-70; 1910, pp. 30-32.

<sup>3</sup>*Id.* 1908, p. 35; 1909, p. 124.

<sup>5</sup>*Id.* 1910, p. 90.

no local union affiliated with a council may strike without the consent of the council. Moreover, not only have the national unions been content to permit the local councils to order sympathetic strikes, but in order to facilitate such strikes provision has been made since 1909 in the constitution of the Department that local unions must not enter into agreements which will prevent their "giving each other prompt and effective assistance or their combining for united action and material support."<sup>1</sup> Where councils have ordered local unions to strike and expelled them for failure to do so, the Department has refused to require their reinstatement.<sup>2</sup> The willingness of the national unions in the building trades to allow local councils to order out the members of local unions on strike is explicable by the fact that the trade-unions in the building trades are far less centralized than in most other trades.

The Department has not been able as yet to enforce effectively even those of its rules relating to jurisdictional disputes and independent unions. The control of the councils by the Department is accomplished, to the extent that it is accomplished, by pressure on the local unions exerted through the national unions with which they are affiliated. If a local council refuses to obey the rules of the Department and its charter is revoked, a part or all of the local unions may form an independent council. The national unions cannot be uniformly depended upon in such cases to prevent their local unions from joining such independent councils. The officers of the Department have proceeded with great caution in enforcing the rules in order to avoid, as far as possible, the formation of "dual" councils. In his report to the convention of the Building Trades Department in 1911 President Short said:

In the case of local councils who saw fit to disobey the mandates<sup>3</sup> of the St. Louis Convention, they were refused any further recognition by the Department in so far as information or the obtaining of supplies etc. was concerned, and charters in various centers would have been revoked had it not been for the fact that it would

<sup>1</sup> Proceedings of the Building Trades Department, 1909, p. 64.

<sup>2</sup> *Ibid.* p. 38.

<sup>3</sup> The "mandates" here referred to were the decisions by the convention of 1911 that local councils should expel the delegates of local unions of Carpenters and Steam Fitters, since these national unions had refused to accept the rulings of the Department with reference to their jurisdictional claims.



have worked serious injury to innocent parties, by that I mean organizations who were loyal to the Department. It would have been necessary, had charters been revoked, to immediately proceed to organize new councils, with the absolute certainty that some of the organizations would have continued in the old council, thus dividing the strength of the Building Mechanics in such centers as new councils were instituted; as witnessed in the case of the St. Louis Building Trades, where we have organized a new council under the laws of the Department and there still remains a portion of the old council who refuse to obey the laws of the Department.<sup>1</sup>

Obviously the control exercised by the Department over the local councils can never be effective until the national unions are willing and able to force their local unions to refrain from opposing the councils established by the Department. This result is not likely to be accomplished in the near future. In the first place, the national unions in the building trades have relatively decentralized governments and correspondingly small power over their local unions. Secondly, the national unions are not infrequently reluctant to abide by particular rules of the Department, although they favor the exercise of power in that field by the Department.

In the period since 1897, then, the national union has retained and made more secure its control of the national federation; it has limited in important respects the powers of the city federations; and finally, it has taken the first tentative steps in the control of the allied-trades councils. In no other period of American trade-union history has the dominance of one of the forms of trade-union grouping been so clearly the ruling principle in the structure of American labor organization. The complete subordination of the city federations and of the allied-trades councils is probable, since the increasing centralization of the larger and more powerful national unions leads them more and more to oppose any interference by local organizations.

GEORGE E. BARNETT

JOHNS HOPKINS UNIVERSITY

<sup>1</sup>Proceedings of the Building Trades Department, 1911, p. 36.

## XXVIII

### THE NATIONAL FOUNDERS' ASSOCIATION<sup>1</sup>

EMPLOYERS' associations in the United States formed for the purpose of dealing with or opposing organized bodies of workmen are of comparatively recent origin, but in the last fifteen years they have become a factor in industrial relations which is not to be ignored. Each December the Stove Founders' National Defense Association and the Iron Molders' Union hold a conference at which are determined wages and conditions of employment in the stove foundries for the succeeding year; the glass manufacturers meet representatives of the several glassworkers' unions annually; the coal operators in the Southern and Southwestern coal fields have a series of written agreements with the United Mine Workers of America. In these and several other industries which might be mentioned the system of collective bargaining developed between the manufacturers and their men has resulted in the maintenance of a permanent industrial peace.

On the other hand, a number of organizations of employers exist almost exclusively for the purpose of resisting collective bargaining and recognition of the unions, on the theory that where the complete autocracy of the employer is preserved the interests of all are better cared for than under any scheme of industrial democracy yet devised. Nor has this conclusion been reached by purely deductive reasoning on the part of those who take this position. One of the most significant features of their program is that it is based upon a wealth of experience, for of the employers' associations active in opposing the advance of the unions some of the most important are those which have attempted to operate under agreements with organizations of their men and after affording the system a trial have found it unsuited to their needs and unadaptable to their industries. This is true of the National Metal Trades Association, which now refuses to

<sup>1</sup>From *Quarterly Journal of Economics*, Vol. XXX (1916), pp. 352-386.

deal with the Machinists' Union ; of the National Erectors' Association, which will no longer countenance the International Association of Bridge and Structural Iron Workers ; of the National Founders' Association as regards the Iron Molders' Union. In addition, the influence of these failures has spread to nontrade organizations of employers such as the Anti-Boycott Association, the National Association of Manufacturers, and the Citizens' Alliances, which have incorporated in their policies a definite defense against union aggressions of every kind.

The oldest and in some ways the most interesting of these now hostile trade organizations of employers is the National Founders' Association, whose membership comprises nearly five hundred manufacturers of cast-iron specialties in the United States and Canada, employing approximately one eighth of all the molders and core-makers in the country and producing a considerable proportion of the output of heavy machinery and lighter iron castings. The story of this organization's struggle with the Iron Molders' Union must always be an important chapter in the history of the American labor movement. Formed in 1898 for the distinct purpose of substituting for the prevailing industrial war a policy of coöperation with the Union, as had been so successfully done by the employers in the stove branch of the foundry trade, the National Founders' Association the next year entered with enthusiasm into an agreement with the Union to arbitrate<sup>1</sup> disputes and thus do away with strikes and the other annoyances characteristic of a union-dominated industry. But as the months went by, this instrument designed for peace seemed to bring only an increase of trouble. Misunderstandings as to its purpose and the method of its operation, combined with actual if not especially glaring violations of its terms on the part of both organizations, soon served to bring about great dissatisfaction. Yet for nearly six years the prescribed form of negotiations was gone through, and an honest effort was made by Association and Union to reach a

<sup>1</sup>The word "arbitration" as applied to the settling of labor disputes was originally used to designate all forms of conferences between employers and employees. In the case of the Iron Molders' agreements with both the Stove Founders' National Defense Association and the National Founders' Association the system required pure conciliation, the board being composed of an equal number from each side with no provision whatever for real arbitration involving the calling in of an odd man.

mutually acceptable method of procedure. When at last it became clear that there was no ground on which both could meet, the Association abrogated the agreement and attempts at collective bargaining were abandoned.

It was perhaps unfortunate that relations with the Union were undertaken by the National Founders' Association before its fundamental law and administrative machinery were fully competent to handle the problems this relationship entailed, but in developing the technic as well as the policy of the Association to its present high standard of efficiency the experience with the Union played an important part. As will appear in the following pages, it was not until 1904 and the abrogation of the agreement that the policy of the Association was firmly established and the governmental, financial, and defense systems completely worked out. Since that time no change worth mentioning has been made in either structure or method, and the Association today is practically what its intercourse with the Iron Molders' Union has made it. It is the purpose of the present paper to describe its structural evolution, but in presenting the facts as to the development of its procedural mechanism no attempt has been made to pass judgment upon the justice of the position it has assumed or the principles for which it stands.

The objects of the National Founders' Association as stated in the constitution are

1st—The adoption of a uniform basis for just and equitable dealings between the members and their employees whereby the interests of both will be properly protected.

2d—The investigation and adjustment by proper officers of the Association, of questions arising between members and their employees.

This purpose has never changed in the seventeen years of the Association's existence, but the means by which it is to be accomplished have altered considerably.

At first there was no definitely expressed policy beyond a determination to band together the foundrymen of the country for the purpose of ridding themselves of many of the working conditions which long years of effective unionism had established in their shops and of preventing further encroachments from that source. In place of union rules as the controlling force in fixing shop conditions, it was desired to establish those "general principles of freedom to

employers in the management of their works" recognition of which the British manufacturers in the industry had just obtained in an agreement with their men. Nothing in this, however, implied any intent to crush the Union. Indeed, there was no hostility on the employers' part except to those practices which it was believed had proved detrimental to their employees as well as themselves. Could these be eliminated and the good which was known to inhere in organized action be molded to the employers' ends, it was thought the workmen and the industry would both benefit.<sup>1</sup>

The model of procedure first followed was that used by the Stove Founders' National Defense Association, whose constitution was in many parts copied almost verbatim and whose policy of agreements with the Union served as the inspiration for the newer organization's attempt to reach a satisfactory system of collective bargaining. But these were no sooner tried than they proved in some rather serious ways to be unsuitable. The constitutional misfits were remedied as the need became apparent; the difficulties with the Union were much more fundamental. It was soon discovered that the freedom from labor troubles which the Stove Founders had secured through their agreement had been purchased at the price of surrendering a considerable share of the control of the industry, that instead of shaking off union rules and a never-before-recognized participation in shop management, agreement had come to mean in the stove foundries legitimized copartnership of authority and administration.

Such a system the National Founders' Association had never contemplated, nor were its leaders convinced that conciliation necessarily implied such a yielding to the Union as the stove men had granted, with what they considered to be so little given in return. During the years of bargaining which followed there was evident on the part of the Association a willingness to make certain concessions to the Union

<sup>1</sup> Proceedings of the Meeting of the Foundrymen, New York, January 26, 1898; William H. Pfahler, *History of the National Founders' Association* (MS.); Proceedings of the Conference between the National Founders' Association and the Iron Molders' Union of North America, New York, March 8, 1899 (MS.), pp. 5-6; Proceedings of the National Founders' Association, Buffalo, February 1, 1899, p. 4; *id.* Niagara Falls, August 9, 1899, pp. 41, 45; *id.* New York, November 13, 1901 (MS.), pp. 76, 128; *id.* Washington, November 11, 1903, p. 5; *id.* Cincinnati, November 16, 1904, in the *Review*, December, 1904, pp. 7-8, 36; National Founders' Association Confidential Circular No. 6.

if its members were to receive commensurate benefits. But all attempts to reach a mutually acceptable set of working rules were balked by the Union's inability to give up or modify any part of its fundamental law. This attitude on the part of the Union may not have been without some justification, but the fact remains that the original plasticity of the Association's policy gave way gradually to a rigidity which made it as unarbitrable and unsusceptible of compromise as that of the Union, and whereas in 1900 the cardinal principles according to which the Association desired to operate were presented mainly as a suggestion of certain features to be embodied in an agreement, since 1904 they have served as an ultimatum whenever Association and Union have come in conflict.

Briefly summarized, the Association's *outline of policy* declares against union restriction of output, union limitation of the earning capacity of the employee, union limitation on the employment of apprentices, union imposition of fines and restrictions upon workmen. It is in favor of a fair day's pay for a fair day's work, the right of the employer to hire whomsoever he sees fit without regard to union affiliation, the operation of molding-machines and approved appliances without restriction, the education of the American boy in the trade of molding without union interference. Instead of representing its members in a collective capacity to negotiate with their men for the terms of employment, the Association has become in reality a mutual insurance organization whose members are protected against the excessive demands of the Union and receive aid in upholding in their shops the principles for which the Association stands.

Although the original law of the Association, combined with the almost immediate ratification of the agreement with the Union, made ample provision for the elimination of cessations in the industry through the use of conciliation in the settlement of disputes, the Association was so organized that it could fight if occasion required, and, in spite of all efforts to maintain peace, recourse to active defense measures was frequently thought to be necessary. When relations with the Union were broken off entirely, although the Association continued to indorse the principle of employer and employee getting together to talk over disagreements, its protective work was still further developed and systematized.

The by-laws have always stipulated that when a member had a dispute with his employees which neither he nor representatives of the Association could settle and in which the latter believed he should receive support, he might be defended in one of three ways: first, by procuring men for him who would take the place of the strikers; second, by affording him compensation for loss of production; third, by making such work as he might require.

In practice, securing molders to take the place of strikers has been the method of defense most generally used. Very early the plan was devised of issuing to those men who had been faithful to their employers in time of labor troubles a "card," or certificate of loyalty, which was to secure for them the special consideration of all members and which at the same time made available for the Association a somewhat permanent force of strike breakers. The cards were accepted by the men with the understanding that they were issued by the Association and remained the property of the Association, to be revoked and recalled at pleasure upon evidence of breach of faith on the part of the holder. Whenever a man took employment with an Association member he deposited his card with his employer to be returned to him at the termination of his contract if his service had been satisfactory, or turned over to the secretary of the Association with a statement of the circumstances for investigation in case his conduct had not been such as befitted the bearer of such a recommendation. It was not intended that card men should remain in the foundries of members as permanent employees, but should be used simply to break a strike and then be moved on when the trouble was over and the regular force returned. In the two big strikes which were handled with this system of defense, 75 per cent of the strike breakers used in the second were card men who had been employed in the first,<sup>1</sup> which would seem to indicate that the men were pleased with the arrangement and that for the Association it provided a means of getting molders much more satisfactory than the usually-resorted-to newspaper advertisements and employment agencies.

It is not known exactly how many of these cards were issued. The first were given out during the Cleveland strike of 1900, and in the following May, immediately after the settlement of that dispute, it was reported that 221 were held by men who had worked for the

<sup>1</sup> Report of the Secretary, N. F. A., November, 1901 (MS.), p. 30.

Association at least sixty days.<sup>1</sup> By November, 1902, the number had increased to 431.<sup>2</sup> Although the practice of issuing cards was continued for some time longer, it is probable that not many more than this were given out, perhaps 500 in all.

Besides receiving the cards, the men who were used to break strikes were guaranteed a "bonus" of at least \$1 a day in addition to the wages paid by the individual employer in whose shop they worked. This bonus was paid from the reserve fund of the Association as a "strike benefit" in recognition of the great inconvenience, social ostracism, and perhaps even personal danger to which every strike breaker is known to be more or less liable. Loam molders in Cleveland received a bonus of \$4, and it is probable that some men earned \$7 and more a day at that time.<sup>3</sup>

The cost of this card-and-bonus system was thought to be, on the whole, less than that of any other method of combating labor troubles. In the Cleveland strike, which lasted seven and a half months and required the importation of 610 men who worked one day or more, the total cost to the Association was \$142,604.52, divided as follows:

Administrative council . . . . .	\$2,899.37
Office expense . . . . .	5,649.51
Procuring molders . . . . .	7,153.42
Delivering molders . . . . .	6,199.39
Compensation to foundries . . . . .	31,175.25
Bonus to molders . . . . .	79,705.53
Detective service . . . . .	4,476.98
Miscellaneous expense . . . . .	793.65
Expense of riot, September 29, 1900 . . . . .	854.04
Legal services . . . . .	415.00
Expense of boarding men out . . . . .	3,282.38

The cost of procuring and delivering molders alone was \$21.89 per molder.<sup>4</sup> In subsequent struggles this item was materially reduced because of the systematic use of card indexes and other devices for keeping in touch with the men once found, which made getting strike breakers at another time an easier matter than had been the assembling of the group in the first place. Thus the total expense to the

<sup>1</sup> Report of the Secretary, N. F. A., May, 1901 (MS.), p. 13.

<sup>2</sup> Proceedings, N. F. A., Detroit, November 19, 1902 (MS.), p. 20.

<sup>3</sup> Report of the Secretary, N. F. A., November, 1900 (MS.).

<sup>4</sup> *Id.* May, 1901 (MS.), pp. 7-9.



Association of the Chicago strike of 1901-1902, which lasted thirteen months, was only \$47,582.33. Here 440 men who worked one day or more were supplied at an average cost of only \$6.28 per man, the total saving per man per day worked being 117 per cent of the cost of the same item in Cleveland the year before.<sup>1</sup> In 1903 the total cost of supporting twenty-three members whose 853 men had gone out was only \$46,238.91.<sup>2</sup>

This method of fighting strikes was fairly satisfactory so long as it was expected the strike breakers would be used only as a temporary lever to bring to terms Union members who would eventually be taken back. But there were several circumstances in connection with the use of the cards which made them open to abuse, and, moreover, the system left the members of the Association as dependent as ever upon the Iron Molders' Union for the maintenance of a trained and permanent labor force. This situation was recognized as early as 1901.<sup>3</sup> But it was not until the break with the Union several years later and the establishment of a nonunion policy that it became positively necessary to provide for a member having trouble with his molders a crew of independent men who would permanently operate his foundry. To attain this end there are now employed under yearly contract a number of mechanics skilled in the trade of molding and coremaking who are placed in the shops of members in periods of labor troubles to act as instructors in breaking in and training new sets of men. These operatives are in no sense strike breakers, for from the moment the union men go out the Union is completely ignored, and the Association is concerned not with breaking the strike but with making the most of the opportunity afforded by the walkout to start up again on an independent and nonunion basis. As rapidly as the shop assumes normal conditions the contract molders are turned back to the Association and transferred elsewhere. By the terms of their contract they are to go wherever they are sent, their railroad fare is paid, and they lose no time because of the traveling.

All men employed through the Association to assist one of its members in making his foundry independent of the Union are engaged either under this yearly contract or under one which is very

<sup>1</sup> Proceedings, N. F. A., Detroit, November 19, 1902 (MS.), p. 15.

<sup>2</sup> *Id.* Washington, November 11, 1903, p. 12.

<sup>3</sup> Report of the President, N. F. A., November, 1901 (MS.), p. 14.

similar to it but is to run only sixty days. They are guaranteed wages varying from \$4 to \$5 a day for daywork, depending upon skill. In some cases the men arrange with the firms to which they are assigned, to work piece or premium plan, and earn in this way sums considerably in excess of the guaranteed day rate. It is said that the labor bureaus run by the Association have been in operation so long, and that the Association is so well and favorably known among the independent molders and coremakers of the country because of its fair dealings, that the bureaus are constantly in touch with men seeking work and can readily supply from time to time whatever labor is needed by the members. The number of men under yearly contract varies with the industrial conditions prevailing. Their contracts expire at different times of the year, and adjustment of supply to demand is therefore easy. When labor troubles have been few, not many will be thus engaged, but the sixty-day-agreement men supplement the others so nicely that practically any foundry can be adequately manned on twenty-four hours' notice.

When a member's support is to consist of the establishment of a new labor force in his foundry, the Association men are shipped to him and turned over to his control. Men who are to be trained are engaged, being often persons previously employed as laborers and at unskilled work in the shop. Machines are installed, specialized jobs are planned, piecework and other schemes for encouraging men to large output are introduced, and in a short time the foundry is in full operation with a new lot of men, improved appliances, and freedom from union rules and regulations.

Occasionally a condition may arise where it becomes necessary or desirable for one member to lend some of his men to another who is involved in a strike. This was sometimes done in the days before the present large supply of nonunion men had been made available, but the commissioner reports that it is a practice to which recourse is now seldom had. Other methods of defense provided for in the by-laws are also used but little, although they may at times supplement the customary method. To send struck work out to be made has been found very likely to bring on sympathetic strikes in the foundries to which it goes. To pay compensation for idle floors is readily seen to be only a last resort. Compared with the system of breaking in a crew of nonunion molders for permanent employment

these latter plans present mere palliatives, for until a body of independent men has been assembled and trained in any foundry an employer is as much at the mercy of the Union as ever and has not succeeded in ridding himself of the causes which were usually instrumental in bringing on the trouble in the first place.

For administrative purposes the Association is divided into districts on geographical lines. In each district is a district committee of five members elected by the Association from names suggested by the members in the district, and an attempt is made to make these as representative as possible of the various localities and foundry interests. Each district committee chooses its own chairman and vice chairman, who constitute with the president, vice president, and treasurer of the Association (unless as at present the last named is a banking institution) an administrative council. For all practical purposes, as regards formulation and carrying out of policy, this body is supreme, except that the constitution can be changed only by favorable action of two thirds of the members; and such other matters as make an expression of opinion from all desirable are referred to their consideration.

From the very nature of the organization the main function of the administrative council has been the settlement and prevention of labor difficulties. At first the president and the district committees endeavored to adjust the constantly arising disputes without the services of any single person whose entire attention could be devoted to this work. Every time a member had a grievance with his employees, no matter how trivial, which the two parties could not settle among themselves word was sent to the proper district committee. This had to meet within three days at the foundry of the complaining member, decide on the merits of his controversy, and if it appeared he was in the right, arrange for such support as they were willing to allow in case the Union pressed the issue. It was also found necessary to convene the entire council in a number of sessions a year. Thus the time and effort required for Association affairs on the part of busy men was so great as to involve serious neglect of their own interests. Few could afford to take responsible offices, and those who did serve felt obliged to limit their terms to one year. The membership of the administrative council and district committees was therefore constantly changing.

In an effort to make the burden of leadership less heavy the salaried office of commissioner was created in 1901 for the purpose of giving one man charge of the details of settling labor troubles and carrying on the executive work of the Association. This has greatly relieved the district committees as well as the president, for they are not called in now until all preliminary investigations have been made by the commissioner. When he believes a strike cannot be averted, the committee meet to decide whether or not they will grant support. In 1906 the president was allowed a salary for such a part of his time as the growing administrative work of the Association required. The result of these changes has been a greater permanence in the offices and a higher degree of efficiency all around. An adequate office and field force of experts, with headquarters in Chicago, New York, and Buffalo, handle the work of the Association. It has become an exceedingly effective business machine, although much of the personal interest and relationship which prevailed when the group was smaller has necessarily been lost.

In order to obtain the Association's support in time of strike, a definite procedure is rigorously exacted of all members. Experience has proved that anything short of this is sure to involve endless misunderstandings and other complications of a more serious nature. Before the defense work was thoroughly systematized there were many disagreements as to the amount of compensation and the circumstances under which it would be paid. Members took action and contracted expenses without authority from officers, council, or district committees, and expected the Association to get them out of whatever further difficulties this involved them in with their molders and to reimburse them for all expenditures. When this was refused, hard feeling, resignations, and lawsuits followed. In 1904, in the general reorganization of the Association's affairs, the protective system was put on its present well-defined basis, and it was distinctly understood that thereafter all claims would be thrown out entirely if procedure had not been according to the letter of the by-laws.

A member having trouble with his men is required to notify the commissioner at once, in writing, giving the full details of the case. An immediate investigation is then made, and if possible the breach is patched up. This failing, the district committee is called together to determine whether or not the aggrieved member's cause is just,

and the findings are reported to the administrative council, with whom rests the final decision as to the granting of support, its nature, and amount. By asking the Association's aid the member places the matter entirely in its hands and binds himself to carry out any decree of the council or of those acting under its authority, and pending the decision he can make no settlement nor discharge his men without the consent of the council. In case support is granted it may be in any one or more of the three ways already mentioned, provided that the supplying of men or the making of work in another shop shall not be undertaken without the consent of the member. It is further understood, and now included in the by-laws, that in procuring molders, having the work done, or giving a money compensation to the amount of two dollars per man per day, this shall be only to the extent of 70 per cent of the men usually employed or the work produced as evidenced by the last quarterly report.

The method of defense having been decided upon, an *agreement for support* is entered into between the member and the Association, in which the latter undertakes to assist and support the member for a reasonable period, this aid to be determined by the administrative council, who may reduce it from time to time or discontinue it entirely. The member in return agrees that the aid given is to be considered as the complete satisfaction of all claims on the Association because of or on account of the prevailing strike, agrees not to make any terms with the strikers or their union representatives without the written consent of the council, agrees to provide at all times adequate police protection for the men furnished, and to absolve the Association from all responsibility for any industrial accidents which may occur. Finally, the member agrees that for a period of one year following the satisfactory adjustment of the trouble he will conduct his foundry strictly on the "open shop" plan.

The support of the Association is by no means given every time it is requested, and in no case is a member entitled to aid until he has been in the organization at least two months. The council in its discretion may refuse help where the member has failed to advise the commissioner promptly of the existence and nature of the trouble or when he has declined to comply with the advice of the president or commissioner. But having acted in accord with the Association's rules in all respects, a member can expect to be supported in any

attempt to enforce those principles for which it stands, as enumerated in the *outline of policy*. In other matters the granting of aid will depend upon the issue involved and the justice of the member's position.

For the year ending November 1, 1913, the support of the Association was granted in thirty-two shops. As understood and classified by the Association the issues involved were

Refusal to work with nonunion men . . . . .	2
Attempt to organize and force closed union shops . . . . .	11
Control of molding machines . . . . .	1
Elimination of differential wage rate . . . . .	1
Refusal to discharge certain men for nonpayment of special assessments levied by the Union . . . . .	1
Demand for strictly closed union shop . . . . .	3
Demand for closed union shop and reinstatement of men discharged for cause . . . . .	1
Demand for minimum wage and closed union shop conditions . . . . .	8
Apprentice ratio . . . . .	1
Objection to employment of handymen . . . . .	1
No demands; pickets from other shops on strike intimidated workmen until they refused to work . . . . .	1
Objection to piecework and refusal to work with nonunion men . . . . .	1

It is obvious, of course, that the cause assigned by the employer in any dispute may be quite different from that mentioned by the men, and that often these causes are so interrelated as to make a singling out of any one utterly impossible. But from the above tabulation it appears that, at any rate in the employers' view, the maintenance of Association principles against the attack of the Union is the fundamental reason for the conflicts in support of which the Association lends its aid. Even if other factors are taken into account, the causes assigned by the Association must be considered to be the ones it believes the most important.

The Association by-laws have always required that during the existence of a boycott against the goods made by any member none of the men originating the boycott should be countenanced until the boycott was removed. In recent years, since the anti-injunction propaganda of the unions has become so important, the administrative council of the Association has voted in individual cases to support

members in their fights to have injunctions against the boycott and other union practices sustained.

From the formation of the Association the attitude of a foundryman toward trade-unionism has in no way affected his admission to membership. He can recognize the Union or not, as he pleases. For although the Association as a body is definitely committed to the open-shop policy, there is no requirement that each member shall run an open or nonunion shop, nor, indeed, is a member obliged to conform to the *outline of policy* in all respects. If certain circumstances make it appear to an employer that he will be advantaged by signing an agreement with the Union, he is entirely free to do so. The one exception is that already noted: after having put his foundry on an open-shop basis through the aid of the Association when he was having difficulties with the Union, he must retain this condition for at least a year. During the period of the agreement with the Iron Molders' Union about 90 per cent of the Association's shops making heavy machinery were union and 80 per cent of the agricultural and malleable shops were open.<sup>1</sup> At the present time 85 per cent of the members run open shops.<sup>2</sup>

Membership in the National Founders' Association is limited to "persons, firms, or corporations engaged as principals in and operators of foundries where castings in iron, steel, brass, or other metals are made." There was a tacit understanding at the beginning that no foundryman would be admitted who was eligible for the Stove Founders' National Defense Association; and in practice members who made castings in any respect similar to those made by members of the latter organization were supposed to be guided in their procedure with their molders as far as possible by the Stove Founders' agreements. In the last few years, however, due to a growing dissimilarity of policy of the two associations, this practice has not been observed, and a number of stove manufacturers who find their attitude toward labor unions more adequately expressed in the National Founders' Association than in the Stove Founders' have been admitted to the former.

<sup>1</sup> Proceedings, Conference, Detroit, November 9, 1899 (MS.), pp. 12, 13; Proceedings, N. F. A., New York, November 13, 1901 (MS.), p. 85.

<sup>2</sup> Hearings before the United States Commission on Industrial Relations, Washington, April 7, 1914 (MS.), Vol. I, pp. 242-243, 245, 246, 248, 251.

In 1900 the first classification of members was made on the basis of work produced in their shops.<sup>1</sup> The results were as follows :

Agricultural . . . . .	24
Architectural . . . . .	9
Brass and bronze . . . . .	4
Engines — electrical, mining, and new machinery . . .	77
Furnaces and heating . . . . .	10
General foundry work . . . . .	143
Light-gray iron . . . . .	33
Machine tools, etc. . . . .	8
Malleable . . . . .	29
Pumps, valves, hydrants, pipe . . . . .	18
Steel . . . . .	10

By comparing the total thus represented (365) with the membership of the Association (275) at the time, it is evident that a number of firms were making two or more kinds of castings. At present a page selected at random in the published directory of members shows one making "structural, engine, and railroad castings, sash weights, castings for brick and butter-tub machinery, general work"; another, "general jobbing, automobile and gray-iron castings"; still another, "air compressors, steam pumps, duplex engine governors"; which list might be continued indefinitely.

During the first few years tremendous efforts were made to increase the membership of the Association. No method of selection was used and bad risks frequently were taken. Not only did some employers who were notorious for always having strikes in their shops gain admission and demand protection, but members refused to pay their assessments, refused to obey the rulings of the council, and in other ways caused the Association much trouble and expense. There was, of course, a natural tendency for concerns not to value membership very highly until they were threatened with an insurrection of their employees, and they would then seek protection in the Association, often only to resign when the difficulty was settled. The membership was far from stable, and in some years more resigned than were admitted.

<sup>1</sup> Proceedings, N. F. A., Detroit, February 1, 1900, p. 29; N. F. A., Confidential Circular No. 26; N. F. A. Handbook, May, 1900.



For a time the law of the Association provided that "no person, firm, or corporation shall be elected to membership who shall be engaged in a strike," but in practice this rule was frequently waived, and employers whose molders had actually walked out were admitted and gained protection. In many cases, by pursuing the policy of defending such a firm, a further extension of the trouble was prevented, and the welfare of the Association was better conserved than would have been the case had the struck shop been denied help and been forced to yield to the Union's demands, since such concessions would inevitably have spread to other foundries in the same locality. The by-laws were therefore changed to conform to practice, and a "probationary membership" was created to take care of those foundrymen who wished to join during a strike. The administrative council may, after investigation and careful consideration, by a two-thirds vote advance a probationer to full membership if it seems to be to the interest of the Association to do so. While on probation the member pays all the fees and assessments of a regular member but receives no financial benefit. Members are not allowed to resign while they are in the midst of a strike or pending the settlement of a dispute, unless by special consent of the council; and in any event four weeks' notice must be given and all obligations to the Association be paid in full. A member who has resigned may be reinstated by the council upon payment of a sum equal to all the assessments he would have paid had his membership continued without interruption.

In the last ten years great care has been exercised in the selection of members, for it has been clearly demonstrated that the Association's strength does not lie in numbers alone. In an effort to include only the best firms in the industry every application for membership is carefully investigated before it goes to the administrative council. A personal visit to the foundry is made by one of the officers, and the firm's financial standing and general reputation is looked into. It is the intention to keep out such concerns as will be a constant source of expense or may in other ways prove undesirable. If the preliminary investigation shows the firm to be running an up-to-date plant, treating its employees in an honorable manner, and having an adequate financial backing, its name is approved by a two-thirds vote of the administrative council and is then sent to every member to be voted on. Unless ten protests to admission are received, election

is complete. Objections raised by other members in the district where the applicant is located may occasionally keep a foundryman out, but for the most part the procedure is purely routine.

Although members of the National Founders' Association employ about one eighth of all the molders and coremakers in the country,<sup>1</sup> their importance in the industry is probably considerably greater than this would seem to indicate, because labor-saving devices not often used in other foundries have made possible in Association shops the employment of fewer men in proportion to the value of the output than is the general average. The foundries vary in size from small jobbing shops employing only half a dozen molders to the huge establishments of some of the best-known manufacturers of heavy machinery and other cast-iron specialties. No firm is admitted which is capitalized for less than \$50,000, and the entire membership may at times represent a total capital of half a billion.<sup>2</sup> This means, in general, that they are the most progressive and most efficiently managed plants in the country. The aim of the Association is to keep them such, for in developing its program for the maintenance of industrial peace it has well understood how important a part is played by fair conditions of work and a body of contented men.

The number of members, the number of foundries represented, and the number of molders, coremakers, and apprentices employed is given in the following table:<sup>3</sup>

<sup>1</sup> Cf. Thirteenth Census of the United States, Vol. IV, Table VI. The fact that the Association's membership contains a few Canadian foundries makes an exact comparison impossible.

<sup>2</sup> The president stated in 1904 that he represented 600 members with a capitalization of \$400,000,000, employing 60,000 men (*The Review*, March, 1904, p. 6); and in 1906, 525 members were credited with \$500,000,000 capitalization (*ibid.* March, 1906, p. 13). As the estimated number of members and operatives is considerably in excess of the number as reported by the secretary for these periods, it is entirely possible that the statement as to capital represented is somewhat liable to correction.

<sup>3</sup> The difference between number of members and number of foundries is due to the fact that some of the concerns operate several shops in different parts of the country. Since 1907 membership has been counted by separate foundries rather than firms, but the secretary has estimated the number of the latter these foundries represent. Figures are for June, 1898; February, 1899; the average of the last quarter for 1900; and for the succeeding years, for the time of the annual meeting in November. Number of operatives given for 1899 is approximate. The secretary reported 94 firms with an average of 59 employees each. (Proceedings, N. F. A., Buffalo, February 1, 1899.)

YEAR	NUMBER OF MEMBERS	NUMBER OF FOUNDRIES	NUMBER OF OPERATIVES
1898 . . . . .	66	. . .	. . .
1899 . . . . .	94	. . .	5,500
1900 . . . . .	369	. . .	16,646
1901 . . . . .	377	. . .	. . .
1902 . . . . .	494	527	27,389
1903 . . . . .	536	579	. . .
1904 . . . . .	456	. . .	. . .
1905 . . . . .	456	500	23,359
1906 . . . . .	475	531	. . .
1907 . . . . .	421	474	22,295
1908 . . . . .	419	467	14,373
1909 . . . . .	408	467	18,585
1910 . . . . .	426	492	22,039
1911 . . . . .	454	489	20,142
1912 . . . . .	484	520	23,593
1913 . . . . .	500	536	25,930
1914 . . . . .	484	514	21,598

Up to the end of 1903 the membership grew rapidly, but since then the growth has not been maintained. The causes of the change are several. The modification of policy as to mere numbers has already been noted. Between 1898 and 1903 there was probably not an employer of molders in the United States or Canada who did not have urged upon him at meetings or through letters or personal interviews the benefit of membership. Then, too, the years from 1899 to 1903 saw a boom in the foundry industry such as it has not since experienced. This meant a greater growth of the Iron Molders' Union and more aggressive activities than have occurred at any similar period in the Association's history. Thus there was a very special reason for many foundrymen to seek protection from the demands of their men. Some of the heavy increase in 1899 and 1900 must certainly be attributed to the signing of the agreement with the Union, about the efficacy of which as a preventive of strikes all were very optimistic. After 1903 the attitude of the Association began to change and many members resigned, some on that account and some because the industrial boom was waning. Between November, 1903, and April, 1904, sixty-five resignations were received, while only twenty-one members joined; between April and August

thirty-three resigned and seven were added; between August and November thirteen resigned and two were added. The reasons given for these withdrawals were that the Association was of no assistance to the members because of their isolation, failure in business, expense, disagreement with the Association's policy.<sup>1</sup>

No loss whatever occurred because of the complete change of procedure in 1904, although there was considerable fear that this result would follow the abrogating of the agreement. Some change in the personnel took place, of course, but resignations were fully counter-balanced by the acquisition of foundrymen who had previously refrained from allying themselves with an organization which they felt tended to foster in their shops what they believed to be the uneconomic and unfair practices of unionism, and to that extent handicapped them as against some of their competitors. Such fluctuations as have taken place since 1903 may be explained almost entirely by referring to industrial conditions and the state of the labor market. When times are good and molders in demand membership increases. When the contrary is true the Association is not so large. There has been nothing of late years in the way of generally prevalent labor troubles to force employers into the Association. It was reported at the annual meeting in November, 1914, that protection had been required for only five members during the preceding year; in 1913 there were thirty-two strikes, and the membership was somewhat greater than in 1914; in 1912 twenty-one shops were protected.<sup>2</sup> Of the foundrymen who stay out of the Association some consider it too radical, others are satisfied to allow it to provide conditions making for an industrial peace in which they share but with the expense of which they are unwilling to be burdened, and still others have always succeeded in maintaining such harmonious relations with their men that they feel no need of help from the Association.

It has been suggested that the weakening of local influence which resulted when the district committees ceased to come intimately in touch with individual affairs might be mitigated by the formation

<sup>1</sup> Proceedings, N. F. A., Cincinnati, November 16, 1904, in the *Review*, December, 1904, p. 9.

<sup>2</sup> *Iron Trade Review*, November 26, 1914, p. 1004; Proceedings, N. F. A., New York, November 19, 1913, p. 17; *id.* New York, November 20, 1912, p. 29.

of local bodies of foundrymen coming together in the national Association, but this has never proved feasible. There are already local organizations of foundrymen in a few of the large centers, to which members of the National Founders' Association in some cases belong, but as a rule the local groups have been so heterogeneous in their constituency as to make an effective method of control impossible, and, except for occasional coöperation in the handling of a particular local matter, there has never been any connection between the two.

An annual meeting of the Association is held in November at which officers and district committees are elected. It is a well-established practice that the vice chairmen of the latter shall succeed the next year to the chairmanship. Votes have always been allowed on all subjects in proportion to the assessments paid. At present each member has one vote, and those members whose assessments exceed \$100 a year are entitled to one additional vote for every \$100 so paid. In the formative years much of the time of the convention was necessarily devoted to discussions of policy, government, and administrative details. But the constitution and by-laws, as well as the policy which crystallized in 1904, have proved so satisfactory as to have occasioned no subsequent concern. Except for the necessary routine business the annual meetings are devoted to consideration of the larger aspects of the labor problem, such as legislation, both state and federal, safety and sanitation work, industrial education, and the like. At many of the meetings there is no mention whatever of trade-unions. Even the administrative council now meets only at the time of the annual convention, since there is no constitutional rule regarding this beyond the provision that the president shall convene it in his discretion or on the written request of four members. Special meetings of the entire Association may be called when there are grave conditions threatening its welfare, but only three have ever been held, the last at the time of the great molders' strike in 1906. When such emergency meetings are held, any decision there reached becomes binding on all members.

Foundrymen on joining the Association agree

1st, In consideration of fair dealing being a cardinal principle of this Association, to protect any of our fellow members who may require our support against any unjust demands of labor organizations and to endeavor to settle all disputes amicably.

2d, To obey the constitution and by-laws and all rules made in conformity with the same, provided they do not conflict with the laws of the country, state, or province in which we do business.

No bond is required that this pledge will be kept, and at first the disciplinary machinery was so defective that members could disregard their obligations with impunity. A particularly bad breach of faith on the part of some members in 1901 led to the strengthening of the hands of the officers so as to give power of investigation and suspension for cause, and this has been used in a few cases where the member concerned settled with the Union after agreeing to leave his dispute entirely in the hands of the administrative council. It never was used to force members to live up to the agreement with the Union, although there were a number of cases of violation in which support was denied.

Especially difficult have been the cases in which members have refused to meet their financial obligations. The by-laws require that if assessments are not paid as they become due (that is, within thirty days after proper notification), a draft shall be drawn against the delinquent. If he fails to honor this, his membership in the Association ceases automatically, except that the council may reinstate him upon his showing cause for nonpayment, and meeting all past indebtedness. On the other hand, members are not expected to leave with dues to the Association unpaid. If sight drafts and collectors fail to secure payment, a lawsuit may result. The decision in an interesting litigation in Ohio in 1904 established the legal status of employers' associations and their right to control their members. It was held that, being formed for the purpose of mutual protection, the Association could not only sue and recover for dues and assessments but also that the application for membership and the acceptance thereof constituted a valid contract, and that thereafter the member was bound by the constitution and by-laws.<sup>1</sup>

The initial financial system left much to be desired both as to income and expenditure. The annual dues of \$50 went into a general fund, available for current expenses, and, in addition, all members on joining paid into the reserve fund such a sum in proportion to the unexpended balance of the fund as the number of molders

<sup>1</sup> *National Founders' Association v. Taplin Rice and Company*, Court of Common Pleas, Akron, Ohio, 1904. See *The Review*, January, 1905, pp. 13-16.

they employed bore to the total number of molders employed by all members. Each member paid to the reserve fund 10 cents a month for every molder employed, molders' and coremakers' apprentices and unskilled coremakers counting two as one molder. The basis of these assessments was the average maximum number of molders employed in each month of the preceding quarter as reported to the secretary.

But these sums were not sufficient to carry on the work of the Association, and special assessments of \$1 a molder were levied, sometimes one, two, or more a year. This meant for many members a great expense, not always commensurate with the benefit they were receiving. One of the largest concerns in the organization paid in one year \$600 in regular assessments and between \$3000 and \$4000 in special assessments. In 1900 the contribution which a firm joining would have to make to the reserve fund averaged a little more than \$11 per molder, and the total amount paid was in some cases \$600 and \$700.<sup>1</sup> This heavy expense brought a number of resignations. Other members believed that the burden was not fairly distributed, in that there was no gradation of assessment on the basis of the molders' skill, although it was well known that loam or machinery molders were infinitely harder to replace than squeezer men or machine operators. In 1902 a change was made to take account of this, and again in 1904, so that at the present time the assessments are as follows: for journeymen floor molders, 40 cents per man per month; for journeymen bench molders and journeymen coremakers, 30 cents per man per month; for molders' apprentices, specialty molders not skilled in the general trade of molding, molding-machine operators, unskilled coremakers, and coremakers' apprentices, 20 cents per man per month; but in no case may the dues amount to less than \$15 per quarter.

The only foundry employees upon whom Association members pay assessments and against whose strikes protection is supplied are molders of varying degrees of skill and coremakers. In 1906, when the Brotherhood of Foundry Employees (a union of cupola tenders, helpers, gangway men, and the like) seemed to be growing in power and importance, the officers of the Association considered the advisability of including them as assessable operatives, with consequent protection to members in case of trouble from that source. But no

<sup>1</sup>Proceedings, N. F. A., New York, November 13, 1901 (MS.), pp. 67, 83.

steps have been taken to bring about this added service, due no doubt to the fact that such unskilled help is replaced so easily that individual employers can fill without difficulty any vacancy caused by their striking and that no need has been felt for the Association to assume this responsibility.

Data regarding assessable operatives have been furnished by the secretary of the Association from the reports of members for the last quarter of selected years.<sup>1</sup>

	1900	1902	1905	1910	1913
Floor molders (skilled) . . . .	. . .	10,527	8,900	6,404	7,430
Bench molders (skilled) . . . .	. . .	4,220	3,063	2,586	2,800
Floor and bench molders . . . .	10,034	. . .	. . .	. . .	. . .
Specialty molders . . . . .	. . .	. . .	1,807	2,489	3,060
Specialty molders and machine operators . . . . .	. . .	4,067	. . .	. . .	. . .
Specialty molders and apprentices	1,959	. . .	. . .	. . .	. . .
Molding-machine operators . . .	1,248	. . .	2,716	3,219	4,502
Molders' apprentices . . . . .	. . .	. . .	2,432	1,861	1,968
Molders' apprentices, unskilled coremakers, and apprentices .	. . .	5,837	. . .	. . .	. . .
Coremakers (journeymen) . . . .	1,907	2,738	2,217	2,268	2,660
Coremakers (unskilled) . . . . .	. . .	. . .	1,357	1,445	1,913
Coremakers' apprentices . . . .	. . .	. . .	867	862	887
Coremakers (specialty and apprentices) . . . . .	1,498	. . .	. . .	. . .	. . .
Total . . . . .	16,646	27,389	22,359	21,134	25,220

The annual dues of \$50 have been abolished, but the original provision for contribution to the reserve fund on joining has been retained and supplemented by a further provision that the council may, in its discretion, collect an even greater sum. The aim has always been to build up a reserve or defense fund of sufficient size to provide for emergencies, which should at the same time serve as a preventive of as well as a protection against the excessive demands of a too confident union. The enormous defense fund of the Stove Founders' National Defense Association, which has not had a strike of its

<sup>1</sup> The figures given here differ somewhat from those presented on page 423, due to the fact that the latter, except for 1900, are as reported at the annual meeting in November and are for the third rather than the last quarter.



molders in twenty-five years, has seemed a feature desirable to copy. For a time it was quite impossible to accumulate very much in the reserve, but in 1903, due to the growing conviction that the financial basis was not entirely sound, a number of changes were made which laid the foundation for the present system. Since then a reserve fund of some size has been continuously maintained. All assessments now go into the general fund; from this appropriations to the reserve are made from time to time by the administrative council, in whose care all financial matters have been placed. Special assessments are levied occasionally for the purpose of increasing the reserve fund and thus equalizing the cost of labor troubles over a period of years, and they have also been asked to meet the requirements of an unusually expensive strike.

No financial statement is published. Any estimate of the Association's income based on the data previously presented as to the number of operatives upon whom assessments are paid is of little value, because of the unknown but fairly frequent special assessments. In a sense the financial resources are unlimited, for no difficulty is experienced in collecting funds when real danger threatens, and it is the policy to ask for extra contributions at such times instead of drawing on the reserve fund. No one resigning or expelled is entitled to a refund on what he has paid in, unless he is retiring from business, in which case he receives such a proportion of the reserve as his percentage of contribution to the average of the last two assessments bears to the balance of the fund unappropriated.

The defense work of the National Founders' Association thus far described has been that which aids members who have come into actual conflict with the Iron Molders' Union. Another part of its activity is concerned directly with the prevention of strikes. The undertakings which have been engaged in for the purpose primarily of avoiding labor difficulties and building up a strong body of non-union molders should be briefly mentioned. After a most unsatisfactory trial of private-detective agencies the Association has taken over its own secret-service work in a department organized expressly to receive information from special representatives, union and independent, in the shops of its members. These confidential correspondents keep the Association informed as to conditions in the foundries, report incipient trouble and proposed outbreaks of the

Union together with suggestions as to how they may be averted, and help in running down union thugs, wrecking gangs, and operations of a lawless nature designed to harm Association plants and nonunion laborers. At no time was the inherent usefulness of this branch of the Association's work better demonstrated than in 1906, when through its channels information was received as to the demands which were to be made by the Union on May 1. The Association, being unwilling to meet them, had ample time to prepare for the general strike which followed. Organized safety and sanitation work has been recently undertaken, partly to meet the new workmen's compensation laws and partly as another means of keeping the men contented by giving them better places in which to work, thereby decreasing the likelihood of strikes. The encouragement of friendly relations between employer and foremen, that the latter may side with the firm rather than with the Union in case of trouble; of proper training for apprentices; of the installation of molding machines, specialization, etc., so as to avoid the worst features of cessations; the insistence upon fair conditions generally,—are all a part of the Association's defense system, that seems to have borne fruit in the increasing size and representativeness of the body of nonunion men who are loyal to the Association and can be depended upon whenever the Union undertakes to cross the path of their employers.

Inability to reach their men in such a way as to put before them fairly the principles for which the Association stands, and the larger aspects of the labor problem generally, was early recognized as a serious handicap to the establishment of the desired relations between employer and employees, and in 1904 an attempt was made systematically to counteract the teachings of unionism on these points by publishing and distributing to the molders of the country such printed material as would correctly state the Association's position, what were believed to be the fallacies of the trade-union arguments, and the program of equitable dealing under which the Association aims to operate its shops. The leaflets of this original experiment have expanded into a creditable monthly journal known as the *Review*, which is published jointly with the National Metal Trades Association, and which has a mailing list of 12,000 names. Its purpose is to provide gratuitously reading material dealing with

trade and industrial questions for the metal workers of the country, who otherwise have to depend upon what is thought to be the one-sided interpretation presented in the *Iron Molders' Journal* and similar organs. In the *Review*, of course, emphasis is laid on the justice of the Association's position in the matter of industrial relations.

With the perfecting of the defense system as outlined, the Association has been free to devote itself to other phases of the problem which is its chief interest. It has coöperated with those organizations whose purpose is to repress the enactment of laws which make for the benefit of union men as against nonunion men and the manufacturers. To this end, it has joined with the National Association of Manufacturers, the National Council for Industrial Defense, and the Anti-Boycott Association in fighting anti-injunction laws, laws designed to limit employment in various ways (as certain regulations of hours), certain types of workmen's compensation laws, minimum-wage laws, and the like. The National Founders' Association has itself at times retained a representative in Washington to watch proposed legislation of possible interest to the Association and to direct attempts to quash such as is undesirable. On the other hand, the Association has given hearty support to those laws which it believes fair and proper. One of the first men who studied the workmen's compensation question was appointed to do so by the National Founders' Association and was afterwards sent to Europe for the same purpose by the state of Minnesota. The Association's safety and sanitation expert has helped to draft a number of state compensation laws, that of Indiana being the Association's model law almost *in toto*. The Foundry Code recently adopted by New York state was drawn up by a board of employers all but one of whom were members of the National Founders' Association.

Enough has been said to show that the National Founders' Association, although a voluntary organization formed to deal collectively with the employees of its members, is as much of a business as is the conduct of the private enterprises of any one of its constituency. Its creed is said to be based on the assumption that its members and their men are living in a free country and that their constitutionally guaranteed freedom to contract must not be interfered with by private or public forces. It directs its strength against those agencies which are thought to hold a contrary view and has organized its own

activities so as best to meet the opposition and advance its own welfare. But though all business is selfish in essence, and though the National Founders' Association is putting into operation those undertakings which make for its own protection, yet it provides at the same time safe and sanitary places in which to work, hours no longer than the going schedule, and wages often in excess of the union rate. While objection may be raised to the paternalism this program involves, the Association has always justified it on the ground that in protecting the independent molders of the country against union monopoly it is performing a real service for those men who wish to be unrestricted but who without support from their employers would never be able to throw off the union control which they find irksome. The present paper does not aim to decide which condition is the more desirable.

MARGARET LOOMIS STECKER

CAMBRIDGE, MASSACHUSETTS

## XXIX

### THE FOUNDERS, THE MOLDERS, AND THE MOLDING MACHINE<sup>1</sup>

THE manufactures of iron fall into three general classes: cast iron, wrought iron, and steel. The present paper deals with some recent problems connected with the manufacture of cast iron.<sup>2</sup>

Castings are made by preparing a pattern of the object, usually of wood, and imbedding this in a matrix of sand or loam of such a composition as will retain the shape into which it is pressed. The mold thus formed is made in two or more parts, later clamped together, with only a small hole or gate through which the metal, reduced to a fluid state in the furnace or cupola, is poured. When cool, the casting is shaken out from the sand, is cleaned, and is then ready for whatever finishing processes are needed. The general industry of casting metal is called founding, the workers are molders, the proprietors of the shops are founders or foundrymen, and the shops themselves are foundries.

Sometimes foundries are adjunct to factories and make only the castings needed for the finished products of the machine shop. Sometimes they are not connected with any other establishments, but do a general machinery and jobbing business independently or on contract from concerns which have no foundries of their own. Sometimes they are large or small specialty shops turning out standardized products ready for the market. Sometimes they combine all

<sup>1</sup>From *Quarterly Journal of Economics*, Vol. XXXII (1918), pp. 278-308.

<sup>2</sup>The expansion of the automobile industry in the last few years has brought a great demand for brass and aluminum castings. Steel castings are a still more recent development in the trade. The census includes these in its classification of foundry and machine-shop products; the National Founders' Association is open to foundrymen in all branches of the industry, and the Union claims jurisdiction over all molders. The present study, therefore, deals in reality with the entire field of molding. Although the Union in 1907 changed its name from "Iron Molders'" to "International Molders,'" the former title will be retained in the present discussion.

three of the features just described. Foundry and machine-shop products are classed together in the census. They are for the most part mutually dependent, however, hence the data there presented are significant as indicating, in a way, the importance of founding. In 1909, foundry and machine-shop products were the second most important manufacturing industry in the United States, in both the number of wage-earners employed and in the value of the finished goods. Not including such distinctive articles as cash registers, calculating machines, sewing machines, electrical machinery, etc., there were 531,011 wage-earners, and the products were valued at \$1,228,475,000.<sup>1</sup> July 1, 1912, 4949 foundries were reported in the United States making steel, gray-iron, and malleable castings. If brass and aluminum castings are added, the total in 1912 was 5996.<sup>2</sup>

The technical development of few industries was so long retarded as was founding. For many years manufacturers were content with a shed and the most primitive implements. The main essential in the production of castings was thought to be a group of skilled artisans. The molder was supreme. He was supposed to be core-maker,<sup>3</sup> molder, and cupola tender all in one. He cut over his own sand, shook out and cleaned his own castings, and had very little to work with except iron, fuel, sand, and a few simple tools. Though rough and dirty, molding was yet a highly skilled trade requiring considerable technical proficiency, in which the processes, many of them apparently simple, demanded long training and experience. A man had to know how to treat his sand so as to get a mixture just suitable for withstanding the heat and force of the molten metal. He had to set the cores accurately and ram the sand around the pattern so as to get a true and substantial matrix. Drawing the pattern so as not to break the mold was a very delicate process, and any resulting imperfection had to be carefully patched. The mold had to be properly vented to allow for the escape of gas arising when the metal was poured. The iron, melted to white heat in the cupola, was poured by the molder, who carried his own ladle from furnace to

<sup>1</sup>Thirteenth Census of the United States, 1910. Abstract, pp. 440-442.

<sup>2</sup>*The Foundry*, Vol. XL (August, 1912), pp. 329, 330.

<sup>3</sup>Cores are made of sand and placed in the molds to form interior openings or holes in the castings when the pattern itself does not allow for these. Molding and coremaking, though closely related, have long been considered by the workmen to be separate trades.

mold. In the process, if the mold was not properly made, an explosion might occur ; or pieces of sand might break loose and run in with the iron ; or the metal might not flow freely and evenly, thus leaving unjoined portions ; or it might shrink internally, causing holes and spongy places. In any of these circumstances the casting was imperfect ; his time and the material had been wasted.

True, even at this time all foundry work did not demand the same degree of skill. The making of small and light flasks on the bench has always required less of the molder than patterns so large and complicated as to necessitate their being bedded directly in a pit of sand or loam in the floor. Floor molding, especially if the design is worked out in loam with a sweep, requires the highest skill in the trade, and is, because of the position of the worker, arduous besides. Bench molders, on the other hand, making the smaller patterns, turn out in a given time a larger number of castings. Machinery and jobbing work usually takes the best mechanics in the trade. Specialty work, of which there are some fifty varieties,<sup>1</sup> is to a large extent repetitive and demands a varying range of ability.

The first attempts to substitute mechanical devices for the molder's skill were crude and attracted little attention. But the inventors persevered, and when finally the time came that molders were not to be had except at wages beyond the average employer's reach, if at all, and then on terms he found distasteful, the producers of foundry machinery were ready to equip his shop with all sorts of appliances intended to relieve him of his dependence on human labor. The result is a foundry differing in many respects from that just described.

Not without a struggle has this change been brought about. Indeed, scores of foundries can still be found in which primitive methods prevail or in which only a slight advance has been made.<sup>2</sup> This, however, is not peculiar to founding. Nor is it peculiar that one of the most difficult problems developed in the march of progress has arisen from the attitude of the workers in the industry. It

<sup>1</sup> T. D. West, quoted in *Iron Molders' Journal*, 1911, p. 270; 1913, pp. 19, 42.

<sup>2</sup> The committee on foundry methods of the National Founders' Association estimated in 1916 that not more than 25 per cent of the foundries of North America have taken advantage of the available mechanical appliances (N. F. A. Service Bulletin No. 1, Chicago, 1916, p. 3).

is natural for those long trained to a skilled trade to be apprehensive of the rapid and unrestrained introduction of those forces which they fear will eventually take it away from them. So it has been in the foundries. As one mechanical improvement after another has come, and the molders have seen that their skill was becoming of ever lessening importance to their employers, they have tried to ward off disaster in such ways and by such means as have seemed at the time expedient.

The Iron Molders' Union has naturally taken the lead in protecting the workers' interests. This organization, numbering in recent years perhaps fifty thousand members,<sup>1</sup> is one of the oldest of the existing trade-unions and is known to be one of the best managed, most effectively officered, and adequately financed. Its local branches, of which there are several hundred, decide upon its national rules and elect its national officers. A general policy once formulated, uniform dues and benefits once established through convention vote or referendum, it is the national officers' duty to see that the law is carried out.

In 1899 the Union made an agreement with the National Founders' Association,<sup>2</sup> composed of about five hundred of the more important employers in the industry, to arbitrate disputes and thus do away with the evil effects of strikes and lockouts. It was the expectation of each organization that a set of mutually acceptable working rules would soon be evolved which would standardize conditions in the trade and make it possible to legislate annually at one conference on all matters related to wages and shop practice. These standard rules were never adopted, however, largely because of the fundamental and unalterable difference of opinion between the two sides as to the

<sup>1</sup> Membership of the Iron Molders' Union is very difficult to estimate because of its fluctuation in response to the ebb and flow of industrial prosperity. The organization itself no longer makes public its exact numbers. Since 1907 it has been represented in the American Federation of Labor on the basis of a membership of approximately 50,000, of which about 47,000 are in the United States. This is a little more than one third of all the persons in the trade over which it claims jurisdiction. (Leo Wolman, "The Extent of Labor Organizations in the United States," in *Quarterly Journal of Economics*, Vol. XXX (1916), pp. 488, 489, 619.) In February, 1917, the editor of the *Journal* made some calculations on the basis of a 50,000 membership (*Journal*, 1917, p. 93).

<sup>2</sup> See also Chapter XXVIII, "The National Founders' Association," pp. 406-432.



introduction and operation of machinery and the development of specialized processes.

Mechanical devices had been introduced in the foundries long before the Iron Molders' Union and the National Founders' Association adopted their arbitration agreement. Some of them, such as the squeezer (a simple appliance for packing the sand) and the stripping plate (for helping to withdraw the pattern without breaking the mold) were hand tools which for years the molders had used as a part of their regular equipment with no idea that either of them constituted a special kind of machine over which there should be jurisdictional disputes.<sup>1</sup> How unimportant machines were prior to 1890 is clearly shown by the small number of pages devoted to descriptions of them in the various manuals of molding published before that time.

About 1890 the first Tabor machine, operated by power and designed to ram the sand by a method far superior to anything then in use, was put on the market. This was followed by machines which drew the patterns, then by others which combined the ramming and pattern drawing. Some of the power machines were profitable only when hundreds of castings from the same pattern were to be made, but others could be used to advantage for a lesser number, and many were adapted to fairly complicated work. Bright young laborers who had never been trained in hand molding began to operate the simpler types of machines, advancing gradually until even the most difficult patterns were made under their supervision. The brains which formerly had vested in the molder were transferred entirely, through the efforts of engineer and patternmaker, to the machine.

The heartiest coöperation was met with from the men who were thus given an opportunity to better themselves. They were more than satisfied. If day rates were paid, their wages exceeded those of helpers and gangway men. On piecework, the almost universal method of paying for molds made on the machines, they could double the earnings they had received at their former employment. In addition, they enjoyed a quite definite psychic income accruing from the

<sup>1</sup>N. E. Spretson, *A Practical Treatise on Casting and Founding*, p. 234; E. Treiber, *Foundry Machinery* (translated and revised from the German by Charles Salter), p. 25.

fact that they were now mechanics—makers of castings, instead of mere common laborers. They were strong, they were used to hard work, and operating the machines was no more arduous than the tasks to which they had been accustomed.

It must be understood that molding machines, instead of being labor-saving devices in the sense that they made easier the work of the molder, often necessitated a material increase in effort by the man who operated them. Though time was actually saved in making any one mold, the fact that more molds were produced meant that there was more sand to shovel, more molds to lift, more molds to pour, more castings to shake out. That is to say, if a man without a machine turned out six castings, but thirty with it, he had to perform all the preliminary labor necessary to making twenty-four additional molds, and by just that much was the other labor incidental to the molding process increased.<sup>1</sup> If these extra operations were performed by laborers and machinery, as has more recently been the case, the molding-machine operator became himself a mere machine, with none of the variety to his work which characterized the skilled handworker.

The few foundrymen who experimented with the machines were delighted with the results. Their labor cost was reduced because of the use of laborers at wages far less than those paid to journeymen, and output was enormously increased. In addition, machine-drawn castings were found to be more uniformly true to pattern, which meant less grinding and machine-shop work and therefore easier and less expensive finishing. Machine-used patterns showed less wear and tear than patterns used on floor or bench. And, probably more important than any other consideration to the employer, the installation of molding machines lessened his dependence on journeymen mechanics. Machines having been invested in, the working force in a foundry could be changed with but little inconvenience, for the skill required for molding was still present in the wood and metal of the machines, while new operators were easily broken in.

<sup>1</sup>A typical case is that of a certain job made on the bench and paid for at the rate of 7 cents per flask. Sixty molds, necessitating 10 ladles of iron, paid \$4.20. Put on the machine, the price was set at 2¾ cents per flask, which would mean, for the same daily pay, 165 flasks to mold and 28 ladles of iron to carry, together with 165 flasks to shake out. The *Journal* characterized this as "enough labor to put any man out of business." (*Journal*, 1907, p. 215.)

Curiously enough, the molders paid almost no attention to the machines during the early stages of their introduction into the foundries. They seem to have been entirely indifferent, as if nothing had occurred that affected their trade or their interests. So firmly convinced were they that no harm could come to them through the introduction of machinery, as had been the case with numerous other trades, that they scorned all offers of an opportunity to operate it. They believed molding would always require manual dexterity and the use of human intelligence and reasoning power. It could not be reduced to terms of a machine.<sup>1</sup>

Yet the use of molding machines steadily increased. By 1900 nearly 10 per cent of the total molding force employed by the National Founders' Association were machine operators, despite the fact that 62 per cent of the work made in its members' foundries was general foundry work, engines, and machine tools, which branches are the least adapted to machine molding.<sup>2</sup>

The officers of the Union by this time had come to look facts squarely in the face. They saw their trade slowly slipping into the hands of laborers. They saw perfect castings being produced without the expenditure of any particular skill upon them. And they decided that the Union's policy in this matter must be changed, that the original attitude of scorn and ridicule had been a grave mistake, shortsighted and unprofitable. It had not prevented the introduction of machines—machines were turning out molds; and if the Union did not now control them, the machines would soon displace the molders.<sup>3</sup>

<sup>1</sup>E.g. *Journal*, 1896, p. 65. William H. Sylvis, the first president of the Union, in trying to impress upon his constituency the desirability of making the trade an honored occupation through maintaining standards of skill, said, "Our trade is only in its infancy in this country and it is one of those trades that can never be interfered with by machinery, for the reason that it requires a *thinking machine* to make castings" (Proceedings, Iron Molders' Union, 1866, p. 12).

<sup>2</sup>Data furnished by the secretary of the Association from the reports of members for the last quarter of 1900. This estimate does not include core-makers. See also *Quarterly Journal of Economics*, Vol. XXX (1916), pp. 370, 381.

<sup>3</sup>President's address to the convention of the Iron Molders' Union, 1899 (Proceedings, I. M. U., 1899, pp. 10, 11; *Journal*, 1899, pp. 395-397). See also frequent discussion of the subject in subsequent numbers of the *Journal*, and Proceedings, I. M. U., 1907, pp. 9 ff.

Their problem was the twofold one of guarding against future danger and of repairing the damage which had already been done. So strongly was this situation emphasized by the Union's officers at the 1899 convention that a report with the following recommendations was indorsed unanimously :

First, that the future policy of the Union should be to seek to establish jurisdiction over the molding-machine operator and all those who work in the various subdivisions of the trade of molding ; second, that they advise and instruct their members to accept jobs on molding machines and to endeavor to bring out their best possibilities ; third, that the officers of the organization ask the coöperation of the foundrymen in forwarding the plan, and in other ways seek to devise means of putting the new policy into effect.<sup>1</sup>

This complete change of front was made by a representative convention of the Iron Molders' Union, but in attempting to carry it out there developed a very difficult situation. The habit of indifference had been too long ingrained in the rank and file. They refused to operate the machines and bitterly opposed the change.<sup>2</sup> Foundrymen, on their part, had become accustomed to laborers at the machines, found them entirely satisfactory, and were loath to allow the molders an opportunity to demonstrate their own superiority. But when these obstacles had been overcome, and the members of the Union finally took their places at the machines, unsatisfactory results almost always followed. The output was not nearly as great as the employer thought it should be ; the machines manifested a persistent tendency to get out of order. The journeymen, after a few days' trial, were always wanting to return to handwork. In addition, they expected to receive the pay which had been theirs as hand molders. The upshot of the matter usually was that after thousands of dollars had been invested in machines, in a few weeks they were relegated to the shed or the yard and no more attempts were made in that particular foundry to carry on machine molding.<sup>3</sup> Or, if the employer persisted in his use of the machines and returned to laborers as operators, they were promptly taken into the Union and the Union

<sup>1</sup> Proceedings, I. M. U., 1899, pp. 75, 101, 112, 165, 166 ; *Journal*, 1899, p. 397.

<sup>2</sup> E. g., letter in the *Journal*, 1899, pp. 412, 413.

<sup>3</sup> *Journal*, 1903, pp. 11-14. See also United States Commission on Industrial Relations, Hearings at Washington, D. C., Tuesday, April 7, 1914 (MS.), Vol. I, p. 256 ; Vol. II, pp. 581-588, 615.

proceeded to help them secure "a wage commensurate with their output and skill."<sup>1</sup>

There is no doubt that many skilled molders, put to work on the machines, did not honestly try to bring out their best possibilities. On the other hand, even when they did, results were not satisfactory. For instance, one foundryman reported that he had five molding machines operated by molders and two by laborers, and in each case the class of work was identical. The molders on their machines turned out from 75 to 100 molds a day; the laborers made from 175 to 200.<sup>2</sup> Another employer had sixty-seven machines. On sixty-two small work was made and laborers were entirely satisfactory. On the five machines making the larger molds they lost about 50 per cent of the castings and could not seem to get the knack of the process. When journeymen were put on there was no loss from imperfect work, and, furthermore, the output was increased. It was distinctly understood, however, that the molders were to leave the smaller machines entirely alone.<sup>3</sup>

There are several obvious reasons for the employers' lack of satisfaction with journeymen on the machines. In the first place, the position of the Union was that its members as well as the manufacturers should benefit by whatever improvements were introduced. Thus, if payment was by the piece, the same rate should prevail for machine as for hand-molded castings. Or, if the day-rate method was used, as the Union at that time greatly preferred, there was, it was thought, no justification for the employer's insistence upon a lower wage rate because the molding was now done on machines instead of by hand. No reason has ever appeared to the Union why its members should work harder or receive a lower proportional rate on the machines than at hand molding.<sup>4</sup> The value of the machines to the manufacturer is largely determined by the amount of labor and skill they eliminate from the molding process.

Again, skilled molders had not been trained to the heavier work made necessary by the machines; their apprenticeship had been served to brain and not to brawn. It was inevitable that their

<sup>1</sup>Proceedings, I. M. U., 1902, p. 617.

<sup>2</sup>Report of the Officers, N. F. A., November, 1902, p. 50.

<sup>3</sup>Proceedings, N. F. A., November, 1901 (MS.), pp. 93-100.

<sup>4</sup>Hearings (MS.), Vol. I, p. 314.

output should be inferior to that of men whose work on the machines was easier than that to which they had been accustomed; who, far from having any prejudice against it, since they had never known any other method of molding, were enthusiastic over its use and felt their best interest to be akin to that of their employers in getting the most out of the machines.<sup>1</sup>

Journeymen had everything to lose by the introduction of machinery,—their trade, their skill, and their pay,—with much harder work in the bargain. Indifference on the part of many developed into active opposition, as employers, trade papers, and molding-machine manufacturers constantly set before them the possibility that in the near future the new inventions were so to supplant the skilled mechanics that they would soon be superfluous encumbrances in the foundries.

At first foundrymen were willing to let union molders take a turn at the machines if they so desired. They never for a moment regarded it as the molder's right, however, and of course expected that a much larger output would result than had been possible under the old hand process. When they found that journeymen would never

<sup>1</sup>"The reasons for the journeyman molder's not producing a maximum output on the machine are two: first, Union affiliation undoubtedly has created in the mind a dislike for and prejudice against the machines; second, he lacks a positive incentive to operate the machines to the best advantage. He anticipates no increase in his earning power—the reward is negative. The laborer is promised a large increase in his earning capacity if he gets the most out of the machine; the journeyman molder is promised employment at a less remunerative work or no work at all if he does not operate the machine to its full capacity.

"For the reasons stated above, it is doubtful whether a nonunion journeyman would make a better success as a machine operator than a union journeyman. The fundamental problem is one dealing with human nature perhaps as much as with union labor. Any journeyman has through long years become so accustomed to certain fixed standards of a day's work that he finds it difficult to adjust himself against all inclination and active prejudice to new standards of output largely exceeding the old. Inquiry in nonunion shops where both floor and machine molders are employed develops the fact that it is difficult, even thus when not encountering union prejudice against the machine, to get a man accustomed to floor or bench work to put up a full day's work on the machine." (Stove Founders' National Defense Association, Report of the Committee on Machinery, 1908, pp. 13, 14.) See also Proceedings, N. F. A., November, 1905, in the *Review*, December, 1905, p. 43; *ibid.* February, 1910, p. 6; United States Bureau of Labor, Bulletin No. 67 (1906), "Conditions of Entrance to the Principal Trades," p. 714.

go on machines if there were handwork to be done, that there was very little if any increase in output, and that the same rate was demanded for machine as for hand molding, they ignored the Union entirely and went back to the system of freely employing unskilled men on the machines.

Only a few months after the Union had voted to coöperate with the manufacturers in the introduction of machinery, though after a long enough time had elapsed to demonstrate that the interests of employer and union employee were essentially divergent, the National Founders' Association adopted a resolution that they would use their own judgment as to who should operate the machines; that when it seemed skilled molders would do the best work, as was sometimes the case, they would be employed, but that the whole thing was a matter of shop practice quite outside the scope of any arbitration agreement, and that "molding-machine operators should not be considered molders in any agreement entered into. . . ."<sup>1</sup>

It seems evident that whereas in the beginning the Association did not conceive of the Union's machine policy as one designed to limit output, a few months' experience caused a reversal of judgment.<sup>2</sup> Members believed they must be free to use the machines as they pleased; the high minimum wage demanded by journeymen, combined with their great scarcity during the period of business activity which characterized the years from 1899 to 1903, made necessary the introduction of whatever practices would make for less dependence on that class of labor.<sup>3</sup> Desirable members were being lost to the Association because they feared negotiation with the Union would deprive them of their prevailing or contemplated use of machines.<sup>4</sup>

It will be easily understood that the Association's arbitrary removal of the machine issue from the purview of their joint agreement, just after the Union had voted to enlist the Association's coöperation in working out a mutually acceptable policy, met with vigorous opposition from the Union. The first clash came at the now famous

<sup>1</sup> Proceedings, N. F. A., February, 1900, p. 35.

<sup>2</sup> *Id.* August, 1899; February, 1900, p. 39.

<sup>3</sup> Proceedings, Conference between the National Founders' Association and the Iron Molders' Union of North America, Detroit, October, 1902 (MS.), p. 14.

<sup>4</sup> Proceedings, N. F. A., February, 1900, p. 38.

Detroit conference of June, 1900. Said the National Founders' Association:

Inasmuch as the molding machine is the product of the machine shop and not of the foundry, it is not under the jurisdiction of the molder, but having been produced at the expense of the employer, there shall be accorded to him the right to operate it in whatever manner he may elect, the same as his right to operate his power plant, cranes, or any other mechanical devices which have been brought into the foundry for the better prosecution of the employer's and molder's joint interest.<sup>1</sup>

The Molders' counter proposition was:

That inasmuch as the molding machine is but an improved tool designed to increase and cheapen the product of the molder and represents both additional capital invested by the foundryman in his business and a different method of applying and utilizing the capital (his labor) of the molder, we recognize that each is mutually interested in the manner of its operation.<sup>2</sup>

The Detroit conference ended in a deadlock and was soon followed by one of the most bitter strikes in the history of the industry. The settlement of this, after more than seven months of struggle, served only to confuse the machine issue. Among other things it was stipulated:

That the right of the foundryman to introduce or operate molding machines in his foundry shall not be questioned. In determining who shall operate them regard should be given to the question of how their best possibilities can be brought out and how the work can be most economically produced.<sup>3</sup>

But it was also agreed that in applying the principle of the minimum wage "operators of molding machines who have not learned the general trade of molding" were not to be considered.<sup>4</sup> This was regarded by both officers and men of the Union as strictly in accord with the ruling of their recent convention and as in no wise relinquishing their interest in the machine question.<sup>5</sup> Members of the

<sup>1</sup> Proceedings, Conference, Detroit, June, 1900 (MS.); *Journal*, 1900, pp. 384-387.

<sup>2</sup> *Ibid.*

<sup>3</sup> Proceedings, Conference, Cleveland, February, 1901 (MS.); *Journal*, 1901, pp. 133-135.

<sup>4</sup> Proceedings, Conference, Cleveland, February, 1901 (MS.); *Journal*, 1901, pp. 130, 131, 196, 197.

<sup>5</sup> Proceedings, Conference, Cleveland, June, 1901 (MS.); *Journal*, 1901, p. 403.



Association, on their part, interpreted it as a surrender to their point of view and tried to use it as a precedent for introducing and operating machines at will without consulting the Union at all.<sup>1</sup> As a result the Union became more seriously concerned than before over the machine issue and found it necessary to repudiate on every occasion this statement of their machine policy.

The Association's attempt to remove the molding-machine issue from joint control with the Union was only slightly successful during the years 1899 to 1903. With business booming and a larger proportion of molders in the Union than ever before, employers had little choice as to their machine policy. While it is true that the national union showed no tendency to support a subordinate group in its opposition to the introduction of machines, help was frequently given when locals were trying to persuade foundrymen to allow their members to show what they could do. Some of the local contracts of the time are interesting as an indication of the expedients resorted to for the purpose of harmonizing conflicting opinions.

One way of getting around the difficulty was to call the unskilled nonunion machine operators apprentices, even though, because of the prevalence of a fixed ratio in some foundries, this necessarily reduced the number of legitimate learners of the trade.<sup>2</sup> In another instance

<sup>1</sup> Report of the President, N. F. A., May, 1901 (MS.), pp. 5, 6; Proceedings, N. F. A., May, 1901 (MS.), pp. 80-85, 91.

<sup>2</sup> An agreement signed in July, 1901, illustrates this:

"Whereas . . . it appears that this employment of a laborer on the molding machines has given rise to some irritation in the shop of the — Co., through a misunderstanding on the part of the molders, and also the further claim on the part of the Iron Molders' Union of North America that the question of the use of molding machines by inexpert labor had not been definitely settled between the National Founders' Association and the Iron Molders' Union of North America, at the solicitation of Mr. Valentine, first vice president of the Iron Molders' Union of North America, that the — Co. remove the machine or the laborer working thereon in order to allay any feeling that its use may have engendered in the shop of the company, the — Co. has consented to call the laborer engaged on the machine an apprentice and to accept him as such, and under this name to operate the machine for the present. The — Co. agree to make this change solely in the interest of peace, and under the special condition that none of their rights to operate molding machines in their foundries by inexpert labor or machine operators are thereby waived or relinquished or forfeited in any manner. And furthermore, it shall not be used as a precedent in any future conference or settlement of the question." (Agreements with Foundrymen, 1901, I. M. U. Miscellaneous Records (MS.).)

an arrangement was made whereby molders were to run machines with flasks more than twenty-four inches square or with an area exceeding 24" × 24", while laborers or unskilled molders were to work on machines with flasks less than that size.<sup>1</sup> Still others required that molders be given first choice as machine operators, and provided for joint determination of the piece or time rate.<sup>2</sup> All of these makeshifts were obviously unsatisfactory so long as no generally acceptable policy had been agreed upon. The persistent demands of the Union for a voice in the determination of a matter the Association considered beyond its power was a source of continual grievance to the latter; the Union was confessedly panicky over the fate of the trade.

In 1902 the national union, having failed to persuade the locals to help enthusiastically in the development of the machines by operating them fairly and bringing out their best possibilities as determined in the resolution of 1899, not entirely comprehending the Association's position in the matter, yet realizing that larger and larger groups of unskilled men were daily turning out satisfactory castings on the machines, resolved to extend the organization to these men. The experiment of forming a special local of machine operators had been tried in the autumn of 1901 and met with such success that their wages were raised and conditions generally were bettered. They were represented at the convention of 1902.<sup>3</sup> On the basis of this trial and because of the Union's urgent need to get control of the machine operators, who otherwise seemed in a fair way to walk off with the trade entirely, the 1902 convention amended the Union's admission requirements so as to include any molder who had served an apprenticeship of four years or worked at the trade four years "in any of its branches or subdivisions."<sup>4</sup> The executive board later decided not to grant an active card to machine operators until they

<sup>1</sup> Report of the Officers, N. F. A., November, 1902, p. 50.

<sup>2</sup> Agreement between Unions Nos. 19 and 24 and the Henry McShane Mfg. Co., December 31, 1902 (MS.); Agreement between the National Founders' Association of Pittsburgh and the Iron Molders' Union of Pittsburgh and Vicinity, no date (MS.); Agreement between the Gould Coupler Co., Depew, N. Y., and the Iron Molders' Conference Board of Buffalo and Vicinity, January 1, 1902 (MS.).

<sup>3</sup> Proceedings, I. M. U., 1902, p. 617; *Journal*, 1902, p. 403.

<sup>4</sup> Proceedings, I. M. U., 1902, p. 754; Constitution, I. M. U., adopted 1902, Article VIII, Section 1; *Journal*, 1902, pp. 531, 532.

had served their full time.<sup>1</sup> But even with this special membership they were regarded as an integral part of the Union in every way.

From then on, the organization of machine operators progressed rapidly and made increasingly trying the relations between the Union and the Association. Each subsequent attempt to reach a uniform agreement on the machine matter—and there were many—only ended in a deadlock, for neither side receded from its original position in the least. Just as it appeared that the interests of the two organizations were so antagonistic as to make any reconciliation out of the question entirely, the industrial tide turned, the panic of 1903 was reflected almost at once in a lessened demand for molders, and the Association lost no time in taking advantage of this situation to release themselves from a situation they had come to find intolerable. The arbitration agreement of 1899 was abrogated by the Association in 1904, and since then no negotiations whatever have been held between the two parties to the original contract.

From this brief account of the struggle of the Iron Molders' Union and the National Founders' Association over the introduction and operation of molding machines, it must appear that one fundamental issue, and only one, was involved on each side. There was in the policy of the national union, no matter what the attitude of the rank and file, no hostility to the machines. Its officers were agreed with the National Founders' Association that machines should be used. They were equally concerned to say when and under what circumstances. The Association was insistent in its support of those members who considered it their privilege to introduce machines at will. The Union was organized to protect its members in the sale of their labor, and this meant that they must control the ways in which the molding process was carried on. The Association, in order to enable its members to attain the greatest efficiency in their business, had to guarantee them its absolute control in their own hands. The two theories are so irreconcilable that it seems doubtful if any satisfactory permanent arrangement could ever have been reached, even with the complete coöperation of the local unions, which apparently was not given during the period in which attempts were being made to bring this about.

<sup>1</sup> Proceedings, I. M. U., 1907, p. 28.

One factor not generally understood is worthy of emphasis in this connection. Almost from the beginning of the industry it has been the custom of the trade to recognize a "set day's work." When a pattern came into the shop a few pieces were made from it, and the foreman then fixed the time that normally would be required to make similar castings in the future. From then on, each man making pieces from that pattern was supposed to conform to the established "set." When the Iron Molders' Union came to be important in the foundries the amount of the task, or "set," became the subject of agreement between the shop committee and the foreman, but this was obviously only a formal recognition of what had always been a legitimate practice of the trade.<sup>1</sup> Thus the handworker had, through long years' practice, become accustomed to turn out so much and no more as a day's work. It is entirely possible, indeed quite likely, that journeymen trained to the hand trade and its speed could never adapt themselves with entire satisfaction to the machine process; that for most of the molding-machine work unskilled men who had never had any other experience, who had no prejudices to live down or trade tricks to unlearn, would make the more successful machine operators.

After relations between the Iron Molders' Union and the National Founders' Association were broken off in 1904, members of the latter continued to use molding machines with entirely satisfactory results. Output was increased, and thousands of dollars were annually saved to those who persisted in using and experimenting with the various types and combinations of appliances available.<sup>2</sup> Some of the achievements are interesting and suggestive. A report written in the spring of 1905, about a year after a very hard and bitter strike had been initiated in three large heater shops, notes the following: one foundry employing forty men at molding had only five journeymen; another had two journeymen out of twenty-eight; and the third had fifteen out of a molding force of one hundred and ten. All three firms were

<sup>1</sup> United States Bureau of Labor, Eleventh Special Report of the Commissioner, 1904, "Regulation and Restriction of Output," pp. 149, 150; David A. McCabe, *The Standard Rate in American Trade Unions*, p. 110; Proceedings, Conference, Detroit, October, 1902 (MS.), pp. 22, 74.

<sup>2</sup> *The Review*, October, 1905; Proceedings, N. F. A., November, 1905, in the *Review*, December, 1905, pp. 44, 46, 47; N. F. A., Plain Talk Pamphlets No. 2, p. 5.

using molding machines and had contracted for the delivery of more. The operators were Poles and Italians, many of whom could not speak English and who had never worked at molding before. The day rate was \$1.50 to \$1.75. At piece prices (the method of paying about half the force) from \$2 to \$3 was paid, with more earning in the neighborhood of \$2 than \$3. While this was in excess of any pay the men had received before they took up molding, the saving to the manufacturer was considerable.<sup>1</sup> In these same foundries the average cost per ton for furnace molding had been \$20.50 before the strike; a year later it was \$16.25. When all the machines which had been contracted for were installed, it was expected the cost would be reduced to about \$14 per ton.<sup>2</sup>

This same report notes operations at a certain pipe foundry. One Pole was putting up 16 molds per hour, size 16" × 19", from a pattern made for 6 pieces of one-and-one-half-inch steam-pipe fittings, requiring six cores in each mold. The man worked nine hours continuously at molding and netted 144 molds in that time. This represented 864 pieces of cored castings weighing 875 pounds. He was paid 1½ cents per mold, or a daily wage of \$2.16. Other

<sup>1</sup>The following table of rates (from the Minutes of the Administrative Council, N. F. A., August 7, 1905 (MS.)) compares prices paid before machines were introduced and the machine-molding price:

	FORMER PRICE	SUBSEQUENT PRICE
Base ring . . . . .	\$0.36	\$0.25
Base ring . . . . .	.55	.27
No. 36 upper deck . . . . .	.34	.20
No. 40 upper deck . . . . .	.42	.22
No. 44 upper deck . . . . .	.60	.25
No. 36 lower deck . . . . .	.37	.20
No. 40 lower deck . . . . .	.47	.22
No. 44 lower deck . . . . .	.66	.28
No. 36 upper fire-pot . . . . .	.26½	.11
No. 40 upper fire-pot . . . . .	.33½	.11
No. 36 lower fire-pot . . . . .	.24	.11
No. 40 lower fire-pot . . . . .	.29	.11
No. 36 shaking-bar grate . . . . .	.08½	.04½
No. 40 shaking-bar grate . . . . .	.09½	.04½
No. 40 short grates . . . . .	.08	.04
Feed doors . . . . .	.09½	.04½
Clean-out doors . . . . .	.05½	.02½
Clean-out cellar . . . . .	.06	.03
Water pan . . . . .	.14½	.07
Water-pan frame . . . . .	.05½	.02½

<sup>2</sup>Minutes of the Administrative Council, N. F. A., August 7, 1905 (MS.).

men were said to be turning out 42 pieces of soil pipe, five feet long and four inches inside diameter. The comment was that no living molder could put up over half of these jobs by ordinary molding methods.<sup>1</sup>

In addition to small and purely repetitive work Association members have come to make heavy and intricate castings on molding machines. The patterns thus mounted may be changed from four to ten times a day.<sup>2</sup> With a proper adjustment of patterns and flasks almost any mold can be made on some type of machine.<sup>3</sup> Indeed, the only limit seems to be imposed by the size of the machine itself.<sup>4</sup> The commissioner of the Association cites a number of instances of large and complicated molds handled in this way. A gas-engine bed with a flask fourteen feet long, six feet wide and four feet deep, weighing with sand, pattern, and board nearly 30,000 pounds, was made on a machine by one handyman and one helper in eighteen hours, where the previous method had taken the time of one molder and one helper for five days. The finished casting from this mold weighed 11,920 pounds and had the additional advantage of being 1000 pounds lighter than it would have been had it been made according to the old method.<sup>5</sup>

Further examples might be produced to show the use of molding machines for this and similar work.<sup>6</sup> But it is important to note other items. In some cases no alteration whatever in the pattern is necessary in transferring from hand to machine molding; in others machines can be used only because of the expert engineering skill that has gone into the making of the patterns.<sup>7</sup> For some castings, such for instance as heavy machinery, part of the molding work may be done on the machines and part by skilled molders on the floor or the

<sup>1</sup> Minutes of the Administrative Council, N. F. A., August 7, 1905 (MS.).

<sup>2</sup> Report of the Commissioner, N. F. A., November, 1908, in the *Review*, December, 1908, p. 33.

<sup>3</sup> *Id.* November, 1910, in the *Review*, December, 1910, pp. 29, 30.

<sup>4</sup> *Id.* November, 1911, in the *Review*, December, 1911, p. 28; *The Review*, January, 1910, p. 33.

<sup>5</sup> *Ibid.* September, 1909, pp. 11-13; January, 1910, p. 76.

<sup>6</sup> See the *Review*, October, 1909, p. 29; January, 1910, pp. 29, 30. Many numbers of such papers as the *Foundry*, the *Iron Trade Review*, the *Iron Age*, contain articles describing the achievements of machines and mechanical devices of all sorts.

<sup>7</sup> *The Review*, October, 1909, p. 29; January, 1910, pp. 71, 79.

bench.<sup>1</sup> Again, machines for molding some specialties have been made absolutely automatic. They require no human labor whatever save for setting the cores, pouring the metal, and shaking out the castings.<sup>2</sup>

With adequate machinery it takes but little time nowadays to transform a common laborer into a first-class machine molder. At first it is probable that a considerable amount of bad work was produced on the machines. For a long time the Union made a great deal of this point and claimed that the discount for bad work often ran from 30 to 50 per cent.<sup>3</sup> With proper machines and instruction, however, it has been found that in from three to six weeks an employer can safely intrust much to a machine operator, and in a few months nothing a machine can handle is beyond the powers of the operators.<sup>4</sup>

The advantages to foundrymen of introducing molding machines may be summarized, then, from their point of view, as freedom from dependence upon skilled labor, and especially from negotiations with the Union, which had been characteristic of the trade when the labor of its members was an absolute necessity; more accurate molds and longer-lived patterns;<sup>5</sup> lighter castings; an increased output varying from double to forty times the production under the hand system;<sup>6</sup> and a decreased cost of production, amounting in some cases to 75 per cent.<sup>7</sup>

More progress was made in introducing efficiency methods and output-increasing devices in the five years immediately following the

<sup>1</sup> *The Review*, January, 1910, pp. 44 ff.

<sup>2</sup> See, for example, a description of the continuous process in making radiators, in the *Foundry*, Vol. XL (1912), pp. 1-5.

<sup>3</sup> Minutes of the Administrative Council, N. F. A., August 7, 1905 (MS.); *Journal*, 1907, and succeeding years.

<sup>4</sup> Probably the following account is typical:

"... The best trick they have done so far is to jar a 24-inch cylinder. They reduced the molding time on this from seven to four days. You would be surprised to see green men handling 15-ton wheels and 33-inch beds. This bed plate under the old system, with the Union, was a six-day job, and under the new system they have just completed nine of them in twenty days. The first one cost them four days, and they cast one every two days thereafter." (*The Review*, June, 1909, pp. 19, 20.)

<sup>5</sup> *Ibid.* June 1910, p. 33.

<sup>6</sup> Hearings (MS.), Vol. I, pp. 255, 256.

<sup>7</sup> *The Review*, October, 1909, p. 29.

break between the National Founders' Association and the Iron Molders' Union than in the twenty-five years preceding.<sup>1</sup> While a number of circumstances contributed to bring this about, undoubtedly the most important single factor was the prevalence of labor troubles and the activity of the Union.

The strikes of 1903 and 1904, instituted by the Union to resist the changes in wages and conditions which the foundrymen undertook to introduce the moment the industrial situation was favorable, resulted in a number of firms' breaking away from collective agreements entirely. This they were enabled to do to some extent through the increased use of machines. But the greatest spur to trying out labor substitutes came in the spring of 1906. During the previous two years the Union had been preparing for a general advance in wages, shorter hours, and the like, and in May declared what threatened for a short time to be a general strike to bring this about. In many foundry centers it was impossible to secure molders except at the Union's terms. To meet this situation the Association called a special convention and determined to resist the demands, no matter what the cost. Hence foundrymen who up to this time had been indifferent to the molding machines or had refused to consider them were forced to have them installed in order to get their orders out. A tremendous incentive was given to inventors also to produce machines which would take care of work hitherto considered to be exclusively the province of skilled men.

A circular sent to members of the Association, June 23, 1906, estimated that nearly 1000 machines had been introduced since May first, and pointed out that increasing numbers of foundrymen were coming to realize their earning power when operated by intelligent men. The improvement in technic brought about in that crisis caused the president of the Association several years later to make the assertion that until the 1906 strike the founding industry was at least fifty years behind the times.<sup>2</sup>

The National Founders' Association has encouraged the introduction and use of machines in every way. Special committees have been

<sup>1</sup> Report of the Commissioner, N. F. A., November, 1909, in the *Review*, December, 1909, pp. 35, 36; Hearings (MS.), Vol. II, p. 619.

<sup>2</sup> Proceedings, N. F. A., November, 1910, in the *Review*, December, 1910, p. 10.



appointed to make investigations,<sup>1</sup> and it is now the accepted policy of the Association when a member is having difficulties with the Union or complains of a shortage of labor to study the particular shop in question and map out a plan for installing machines to take the skilled men's places.<sup>2</sup> Just what effect the war and its needs have had on the utilization of machines is not subject to statistical measurement at this time. The 1917 convention of the Association devoted an entire session to the subject, for the purpose of demonstrating to its members how many current problems might be solved by the introduction of mechanical equipment. Molding-machine manufacturers are said to be overwhelmed with orders, and delivery cannot be made in less than six or eight months. It is to a certain extent true that "the molding machine and the handyman molder have made possible the open shop in the foundry."<sup>2</sup>

Specialization has been developed to the highest possible degree. Trained designers make patterns so simple that a man with little experience can use them. Tool-makers have coöperated to turn out machines for making castings which the molder of twenty years ago would have said only the most skilled mechanic could produce. Laborers and operatives trained not in the general trade of molding but only in one simple branch do work which it was thought belonged to the expert on the bench. Coremaking, which everywhere used to be regarded as a trade in itself, has also become somewhat of a machine process. The technic of cupola and ladle have been vastly improved. An overhead crane, reaching into all parts of the shop, lifts patterns and molds and castings. Sand is cut, mixed, and sifted, and castings are chipped and cleaned by machinery. In up-to-date foundries a mechanical engineer often has charge of the entire plant; a chemist tests iron and sand for each of the special uses to which they are to be put. Everywhere the development of the industry has meant increasing differentiation between the mental and the manual work, more intense simplification of processes, more

<sup>1</sup> Minutes of the Administrative Council, N. F. A., November 19, 1908 (MS.). See also N. F. A. Service Bureau Bulletins.

<sup>2</sup> Report of the Commissioner, N. F. A., November, 1910, in the *Review*, December, 1910, p. 27.

<sup>3</sup> *Ibid.* p. 30.

minute specialization of tasks.<sup>1</sup> With this has come greater efficiency of management, a higher standard of safety, and better conditions generally for workmen, producers, and the consuming public.

It is not to be understood that this development of specialization and the use of machines has entirely eliminated the Iron Molders' Union from its very important place in American foundries. That the Union has retained its foothold is due to the tireless watchfulness of the organization's leaders and their speedy adaptation of union law to meet the changing conditions. At the 1907 convention additional steps were taken to get the machine operators into the organization. This came the year after their only partially successful general strike had shown how powerful a weapon the molding machines might be against them. The constitutional qualifications for membership were defined so as to include machine operators as such; they were to be granted a special charter in any community large enough to support a separate local,<sup>2</sup> and the officers were given great latitude in determining the method of compensation for work done on the machines.<sup>3</sup>

A definite campaign to organize the machine operators was undertaken forthwith. This plan under way, the Union believed its machine problem had been solved. But new issues continued to arise. Individual members insisted upon advocating the destruction of machines or handicapping their usefulness as much as possible;<sup>4</sup> proposals were made to do away with the special machine molders' cards, which would allow only men who had been at the trade four years to operate the machines.<sup>5</sup> The executive board has sanctioned a number of grievances of locals against the use of handymen on machines,<sup>6</sup> but has adhered firmly to the policy of organizing and bringing into the Union as many machine operators as possible.

In the foundries where the apprentice ratio of one to five journeymen prevails the policy has been to allow machine operators who

<sup>1</sup> Subdividing foundry work may be carried to such extremes as to produce facing-mixers, mold-rammers, pattern-drawers, gate-formers, feedinghead-makers, mold-closers, metal-temperature judges, mold-pourers, casting-feeders, etc., all knowing but the one thing which has been learned in a few weeks (*Journal*, 1913, p. 41).

<sup>2</sup> Proceedings, I. M. U., 1907, pp. 102, 103, 193; Constitution, adopted 1907, Article VIII, Section 6.

<sup>3</sup> *Journal*, 1907, p. 650.

<sup>4</sup> *Ibid.* 1909, p. 122.

<sup>5</sup> Proceedings, I. M. U., 1912, pp. 166, 243.

<sup>6</sup> *Ibid.* p. 51.

have served less than four years only if the apprentice quota is not complete.<sup>1</sup> It is expected that in union shops all molding machines will be operated by union members or apprentices.<sup>2</sup> No member is permitted to teach or instruct a machine operator who does not belong to the Union or who is not an apprentice, under penalty of expulsion. A union foreman cannot work over a nonunion machine operator unless the latter is an apprentice.<sup>3</sup>

The net result of the attempts to enforce in American foundries these machine policies of Union and Association, so essentially in conflict, would be hard to estimate. The following table, based on figures furnished by the secretary of the National Founders' Association, shows the per cent machine operators were of the total molding force in the foundries of Association members at different periods:<sup>4</sup>

1900	. . . . .	9.4 per cent
1905	. . . . .	14.4 per cent
1910	. . . . .	19.4 per cent
1913	. . . . .	22.8 per cent

In the same time skilled bench and floor molders changed in relative importance to the total molding force as follows, constituting in

1900	. . . . .	75.7 per cent
1905	. . . . .	63.0 per cent
1910	. . . . .	54.3 per cent
1913	. . . . .	51.8 per cent

Comparing these two groups, it appears that while molding-machine operators have increased considerably in importance to the total molding force in Association foundries, skilled mechanics have been displaced at a more than proportionate rate. It thus would seem that machine operators alone cannot be charged with having driven journeymen from their accustomed trade. Of nearly as great importance in bringing this about has been the increase in the numbers of unskilled specialty molders. Data available do not permit of distinguishing this class of labor from apprentices in 1900, but the increase even from 1905 to 1913 is significant.

<sup>1</sup> Proceedings, I. M. U., 1912, p. 222.

<sup>2</sup> *Ibid.* pp. 156, 206, 223, 238.

<sup>3</sup> *Ibid.* pp. 126, 127, 206; Constitution, adopted 1912, Article XIII, Section 8.

<sup>4</sup> See also *Quarterly Journal of Economics*, Vol. XXX (1916), p. 381.

Per cent specialty molders were of the total molding force:

1905 . . . . .	9.5 per cent
1910 . . . . .	15.0 per cent
1913 . . . . .	15.6 per cent

These figures, taken in connection with the preceding groups, must not, however, be used as conclusive evidence that unskilled workmen are usurping the places of journeymen in the foundries of members of the National Founders' Association, because of the fact that there is no way of measuring to how great an extent the class of foundries making up the membership of that body has changed, so as to offer a wider opportunity for the employment of laborers.<sup>1</sup> Nevertheless, from the facts available it seems likely that while skilled mechanics continue to occupy an important position in Association foundries, their place is gradually being taken by inferior craftsmen.

How this tendency compares with conditions generally cannot be stated. In 1910 the National Founders' Association employed 13.4 per cent of all those in the country who worked at the trade of molding.<sup>2</sup> Eighty-five per cent of its members run open shops.<sup>3</sup> It is therefore possible that among those foundries where union influence has had more weight skilled journeymen are of relatively greater importance than in the shops of the Association. Certainly up to 1908 the Union had succeeded admirably in controlling the machine situation in the shops of the Stove Founders' National Defense Association,<sup>4</sup> and as these two latter bodies never came to an agreement as to the pricing of work done on the machines until 1914, it is quite likely there has been but little change up to the present time.

The Union itself offers no data as to the relative importance within its membership of skilled mechanics, specialty molders, and machine operators. Nor is there any satisfactory means of estimating the

<sup>1</sup>An increase in the number of members who made specialties as against those who made heavy machinery would mean a greater likelihood of the employment of machine operators and specialty molders. The reverse would be true if the increase in members came from the ranks of the heavy machinery-makers.

<sup>2</sup>On the basis of 18,411 molders and coremakers, exclusive of apprentices, employed by the National Founders' Association, and a total of 137,262 male molders, founders, casters, and coremakers enumerated in the census of 1910 (Thirteenth Census of the United States, 1910, Vol. IV, Table VI).

<sup>3</sup>Hearings (MS.), Vol. I, pp. 242-243, 245, 248, 251.

<sup>4</sup>Stove Founders' National Defense Association, Report of the Committee on Machinery, 1908.

probable composition of its membership at the present time as compared with twenty years ago. It seems very probable, however, on the basis of known facts, that even though the numbers over a given period are substantially identical, a smaller and smaller proportion are skilled men.

This much is true: molding machines have made serious inroads upon the molders' trade; the employers of the country have come to realize the value of machines and are using them in ever-increasing quantities; the Molders' Union has been obliged to alter its policy at a number of points to allow for the changed conditions. On the other hand, it is not true that machines have made human skill unnecessary for foundry work. There is still a great demand for trained men. Even with specialization and machine molding, experts are required to set cores, finish and close molds, and perform other similar operations demanding the application of technic and judgment. Some types of molding are as yet entirely unadapted to the machines.

To how great an extent the proportion of skilled men required will decrease in succeeding decades cannot possibly be determined. On this will hinge almost entirely the Union's structure and activities. And on this will depend to a large degree the future policy of the Association. If a steadily increasing proportion of the trade is given over to machines and unskilled foreign workmen whom it is difficult for the Union to organize and hold in the face of alluring offers from their employers, the Union is likely to suffer. If the maximum possibilities of the machines have already been realized, the Union stands a very fair chance of holding its own, no matter what the organized employers may do.

MARGARET LOOMIS STECKER

CAMBRIDGE, MASSACHUSETTS

### XXX

## COLLECTIVE BARGAINING IN THE GLASS-BOTTLE INDUSTRY<sup>1</sup>

THE agreement between the Glass Bottle Blowers' Association and the National Glass Vial and Bottle Manufacturers' Association furnishes an impressive and an instructive exhibit of the feasibility of carrying on for a long term of years a peaceful and mutually agreeable system of collective bargaining. While friction between the parties to the agreement has at times been great and while the agreement has often been almost at the breaking point, yet so enlightened has been the policy of the representatives of both the union and the manufacturers' association in granting concessions and in yielding upon disputed points that the agreement has operated, in one form or another, for almost a quarter of a century. Nor have external conditions been particularly favorable to the continued life of the agreement. The technical revolution of the industry, beginning in the middle nineties with the installation of the so-called "semi-automatic" machine and intensified after 1900 by the invention and the later extensive use of the Owens automatic machine for the manufacture of glass bottles, has presented to the conferences of the manufacturers and their employees problems that every year become more perplexing and more difficult of solution. The promulgation of working rules to govern those members of the union who were employed on the semi-automatic machines, the regulation of the wage scale so as to retain a fair wage for the glass blower and at the same time to permit the employer of hand blowers to compete against the machine, and finally a new adjustment of wage scales designed to meet the competition of the automatic are a few of the problems which have received at the hands of the annual conference, if not a perfect solution, at least a workable settlement.

<sup>1</sup>From *American Economic Review*, Vol. VI (1916), pp. 549-567.

## HISTORY AND GENERAL DESCRIPTION OF THE AGREEMENT

The glass-bottle blowers were organized originally not in one national organization but in the separate and independent Eastern and Western Leagues of Green Glass Bottle Blowers. In 1886 the Western League became affiliated with the Knights of Labor as District Assembly 143 of that organization, and in the same year the Eastern League was affiliated as District Assembly 149. As early as 1886, also, there is record of annual conferences between the Eastern and Western Leagues of blowers and of loosely organized associations of Eastern and Western bottle manufacturers. The fact, however, that the organizations in these two sections of the country often worked at cross-purposes and that concessions from the one would at times be used to force similar concessions from the other, coupled with the fact that the frequent passage of journeymen blowers from district to district made the disciplining of their membership difficult, soon led to a movement to amalgamate the Western and Eastern Leagues of Glass Bottle Blowers into one national organization.

In 1890, accordingly, the Eastern and Western Leagues united in one body under the title of the National Trade Assembly 143, Knights of Labor of America. And in July, 1891, the assembly withdrew from the Knights of Labor to become the Green Glass Bottle Blowers' Association of the United States and Canada. With the formation, then, of the national organization of glass-bottle blowers in 1890, the sectional conferences of preceding years were succeeded by national conferences between representatives of the union and of the manufacturers.

During the first few years following the amalgamation, evidence of the conflicting interests of the Western and Eastern manufacturers could still be found. Thus, at the conference of 1890, although an agreement could have been effected with the Western manufacturers, the chairman of the conference stated that he could not promise that the Eastern manufacturers would be bound by the findings of the conference. Later the Eastern manufacturers actually withdrew from the conference. Indeed, it was at that time the opinion of the officers of the union that the "Eastern and Western manufacturers were evidently trying to effect a settlement independently of each other to

create discontent" in the ranks of the union.<sup>1</sup> But since the union would treat only with a joint committee representing the manufacturers from both sections of the country, the manufacturers were unsuccessful in their efforts to revert to the earlier sectional conferences. With the gradual development of the machinery of the conferences and with the growth in mutual confidence of the parties to the conferences, the conflicting interests of the different sections became less pressing and the manufacturers' association developed into a more compact and more homogeneous organization.

Prior to 1899 it had been customary to hold annually one wage conference in the month of either July or August, usually several weeks after the union and the manufacturers' association had held their annual conventions. But this system was soon found to be open to serious objections. A single annual conference, at which were submitted by the conferees demands and counterdemands whose purport was known only to their sponsors, precluded, in the judgment of both the manufacturers and their employees, that familiarity with the propositions which is essential to their intelligent consideration. The plan was therefore adopted of holding a preliminary conference in May, at which would be submitted the demands of both parties.<sup>2</sup> Those questions upon which there was little disagreement would be settled at this preliminary conference. The more debatable propositions would next revert to the annual conventions of both associations for further discussion and would then in July or August be submitted to the final conference for final disposition.

The value of such a preliminary conference was at once observed. President Hayes of the Glass Bottle Blowers' Association writes in 1900:

The amount of work done at the May conference this year in the way of listing bottles and discussing important questions proves that this preliminary meeting of the wage committees has become a vital necessity, unless, indeed, we are desirous of a protracted wage conference later on, or possibly two or three separate ones, which may be prolonged to such an extent as to delay or hamper the beginning of work in the fall. At the May meeting we hear the manufacturers' side of the story, and are, therefore, enabled to lay it before the convention for discussion and counsel. This is right and proper, as it

<sup>1</sup>Proceedings of the United Green Glass Workers' Association of the United States and Canada, 1892, p. 13.

<sup>2</sup>Agreement, sect. 40, in *Blast*, 1899-1900.



is a matter of duty for us to view all questions from both sides, and it would be neither just nor safe for us to legislate with only a one-sided knowledge of matters upon which the trade depends so much for successful operation.<sup>1</sup>

With the establishment and successful operation of the preliminary conference, elaborate rules, regulating the conduct of the preliminary and final conferences, were formulated. Of the rules regulating both conferences the most important were (1) the rule providing that no question which had not been brought before the preliminary conference would be considered at the final conference and (2) the provision for the submission of questions by the parties to the conference.<sup>2</sup>

The agreements made before 1902 laid down the working rules and price lists for each year, but made no provision for the adjustment of questions arising between the annual conferences. There was, to be sure, the rule stating that "all ware not specified in the list shall be rated at the same price and subject to the same rules, in regard to weight, as those specified in the list which they resemble in size, shape, weight, and finish." This clause did not, however, specify who was to settle disputes arising from disagreements in assigning new bottles to various brackets, nor upon whom was to devolve the duty of interpreting the many rules included in the annual agreements. This link in the agreement was supplied at the conference in 1902. At the suggestion of the manufacturers,<sup>3</sup> the president of the Blowers' Association was chosen as the officer to whom "all information wanted in regard to the intent or meaning of rules and regulations shall be referred." It was further provided that his decision was binding until reported to and revised by the joint conference.<sup>4</sup>

<sup>1</sup>Proceedings, Glass Bottle Blowers, 1900, p. 47.

<sup>2</sup>The manner in which questions are submitted to the conference is described in the following clause of the agreement: "Manufacturers and branches shall notify each other of all bottles or changes intended to be submitted to the May conference, and the reason for so submitting them, which notice shall be in writing. The branches shall send such written notices to the president of the Glass Bottle Blowers' Association and the manufacturers shall send their written notices to the president of the National Vial and Bottle Manufacturers' Association." ("Wage-Scale and Working Rules—Glass Bottle Blowers' Association," sects. 42-44, in *Blast*, 1914-1915.)

<sup>3</sup>Proceedings, Glass Bottle Blowers, 1902, p. 47.

<sup>4</sup>Agreement, rule 53, in *Blast*, 1902-1903.

As in the case of all matters included in the annual agreements between the bottle blowers' union and the bottle manufacturers, the rules providing a mechanism for the adjustment of disputes arising between the final conference of one year and the preliminary conference of the succeeding year have since 1902 undergone some modification and considerable amplification and exist at present in the following form :

All information wanted in regard to the intention or meaning of the rules, regulations and prices shall be referred to the president of the blowers' organization, whose decision in all such cases shall be binding unless said decision is reversed by the joint wage preliminary conference in the case of a protest.

Manufacturers who desire to protest against a decision of the president shall serve notice in writing on the branch in their locality of their intentions to protest, and shall also notify the presidents of both the manufacturers' and blowers' organizations of the protest; this notice shall contain all information necessary for a proper review of the case protested. Said notice shall be served not later than thirty days prior to the first day of the preliminary conference.

Protests on decisions made between April 1st and July 31st shall be reviewed at the final conference, with notice as above stated, to be served no later than August 1st.

No case in protest shall be reviewed by either conference unless the foregoing has been fully complied with.<sup>1</sup>

Originally, when a clear line of demarcation existed between the flint-glass-bottle workers and the green-glass-bottle makers, the union of green-glass-bottle makers, the parent organization of the present Glass Bottle Blowers' Association, held wage conferences with the association of green-glass-bottle manufacturers. Later, however, with the introduction of the tank and the extension of its jurisdiction over all bottle-makers, whether blowing bottles from tanks or covered pots, the union held separate conferences with the green-glass and with covered-pot manufacturers. At the conference of the representatives of the union with the representatives of the Flint Bottle Manufacturers' Association for the purpose of fixing prices and rules to govern the manufacture of covered-pot ware for the season of 1902-1903, the chairman of the conference, a manufacturer, stated "that in his opinion all matters pertaining to the making of bottles should

<sup>1</sup>"Wage-Scale and Working Rules—Glass Bottle Blowers' Association," sect. 45, in *Blast*, 1914-1915.

be settled by one committee, but that while the blowers were practically all in one association, the manufacturers were unfortunately divided into two, hence" the necessity for two conferences. In the following year, therefore, the scope of the manufacturers' organization was widened to include all persons engaged in the manufacture of glass bottles, and a subcommittee was thereafter annually appointed to consider questions that might arise between the covered-pot manufacturers and their employees. Now that the manufacturers of covered-pot ware have been admitted into the employers' association, the Glass Bottle Blowers' Association holds annually a preliminary and a final conference with the representatives of one manufacturers' association, the National Glass Vial and Bottle Manufacturers' Association. At these conferences there are drawn four distinct sets of price scales and working rules. (1) One governs the manufacturers and employees engaged in the hand manufacture of glass from the tank; (2) another governs the manufacture of covered-pot ware; (3) a third relates to rates and rules for the semi-automatic machine in the manufacture of wide-mouth ware; and the last (4) constitutes the wage scale and working rules governing the "United and the O'Neill and the one- and two-man narrow-mouth machines."

The essential features, then, of the agreement between the Glass Bottle Blowers' Association and the National Bottle Manufacturers' Association are

1. The provision for annual preliminary and final conferences for the discussion and settlement of working rules and wage rates.
2. The machinery for the settlement of disputes arising between the conferences and for the review of these settlements.
3. The promulgation of price lists and working rules for the four divisions of the industry: the tank, covered-pot, semi-automatic wide-mouth, and semi-automatic narrow-mouth ware.

#### THE EMPLOYERS' ASSOCIATION

The National Glass Vial and Bottle Manufacturers' Association existed before 1890 as the Western and Eastern Associations of Green Glass Bottle Manufacturers. These associations were loosely organized bodies that existed principally for the purpose of holding wage conferences with the Eastern and Western Leagues of Green

Glass Bottle Blowers. With the amalgamation of those organizations in 1890 the manufacturers effected a somewhat similar combination which apparently confined itself to the selection of representatives to the annual national wage conferences with the United Green Glass Bottle Blowers' Association. Later, upon the absorption by the Glass Bottle Blowers' Union of all branches of the trade, the employers' association similarly extended its jurisdiction. In the constitution revised and amended in 1902, it is stated that the Association admits into membership "any person who manufactures glass vials and bottles in tanks or open pots and employs workmen under the jurisdiction of the Glass Bottle Blowers' Association."<sup>1</sup> An amendment to the constitution is now pending which would admit into membership "any person who manufactures glass bottles and jars, either from tanks or from open or covered pots."<sup>2</sup>

The officers of the organization consist of president, vice president, secretary, and treasurer elected annually by ballot and of an executive committee appointed annually by the president. This committee, together with the officers of the organization, constitute the representatives of the Association at the annual conferences. Meetings of the Association are held annually between the preliminary and final joint wage conferences and are occupied almost exclusively with the discussion of issues raised in the preliminary conference.

The Association practically restricts its activities to those of collective bargaining. The object of the Association has been "to increase the mutual acquaintance of all persons engaged in the manufacture of vials and bottles; to exchange views on the various subjects that are of general interest; to look after any tariff legislation affecting the welfare of the business; to attend as far as possible to any changes or discriminations in the classifications made by railroads on the line of goods manufactured and handled by the Association; to meet with the blowers' executive board as often as may be necessary each year to fix a uniform scale of wages for blowing the various kinds of vials and bottles manufactured for the trade; to establish rules and regulations for the government of all factories throughout the United States and Canada. . . ."<sup>3</sup>

<sup>1</sup> Article II.

<sup>2</sup> Special Meeting, National Bottle Manufacturers' Association, May 26, 1914.

<sup>3</sup> Constitution, 1902, Article I.

Although provision is made for tariff and railroad committees,<sup>1</sup> the organization has shown little activity in this direction.

The relations of the Association and the glass bottle blowers' union have on several occasions been almost at the breaking point, and several of the conferences have adjourned without reaching an agreement. The organization, however, has never become a hostile association and no record is extant of its having sanctioned, as an association, even isolated acts of hostility toward the blowers' organization. In a few cases, to be sure, it has been unable to prevent members from violating the agreement; persistent violation would, however, result in the expulsion of the member from the Association.

The Association has never adopted any system of fines for the disciplining of its members, either for the violation of edicts of the Association or of the terms of the joint agreements. Nor did it have until recently any settled policy toward the union manufacturers not members of the Association. For some time such manufacturers were permitted to attend the conferences, to submit propositions, and to request reviews of the decisions of the president of the blowers' association. At the final conference in 1913, however, it was announced that the following resolutions had been adopted by the National Vial and Bottle Manufacturers' Association:

Whereas, There are a number of Bottle and Jar manufacturers throughout the United States and Canada, employing members of the Glass Bottle Blowers' Association who have heretofore received practically all the benefits derived from the action of the Joint Wage Conferences, without becoming members of the National Vial and Bottle Manufacturers' Association, or without contributing towards paying the necessary expenses connected therewith. Some have declared they would get along better without the association or without a Joint Wage Conference. Others declare there is nothing to be gained by membership in the organization so long as they are able to obtain the benefits therefrom without sharing in the expenses, and by not being members they argue that they are not bound by the action of the Joint Wage Conference, yet they gladly accept and make use of all decisions of said conference that pleases them, therefore be it

Resolved: That the members of our Executive Committee, when in conference with the workmen's committee, be and are hereby instructed to decline hereafter to consider any disputes, grievances, etc., or the listing of bottles, their prices or classifications or any other

<sup>1</sup> Constitution, Article III.

matters arising in a factory the management of which is in no way affiliated with the National Vial and Bottle Manufacturers' Association that may come before the Joint Conference either directly or indirectly, thus leaving all such matters to be decided by the President of the Glass Bottle Blowers' Association, whose decisions shall be final in so far as they pertain to the particular factory, but any decision he shall make in such cases shall not be construed as establishing a precedent, nor shall it be applied to, or be binding upon other factories, but it is understood that any decision thus rendered, shall upon application by any member of this association, be subject to review by the Joint Wage Conference.<sup>1</sup>

These resolutions for a time nonplussed the representatives of the union. "While this was a rather extraordinary proceeding," writes the secretary of the blowers' association concerning these resolutions, "still we could not but agree with them in their contentions. Our association will, therefore, exercise its best judgment in dealing with those who do not belong to the above-mentioned association, dealing, as we have always done, fairly and impartially with all."<sup>2</sup> The net effect of this action of the employers' association is to leave the independent union manufacturers in almost the same condition as before. They are granted by the union the same working conditions and the same prices as operate in the establishments of those manufacturers belonging to the organization. There is this difference, however, the independent manufacturers have no organization to which they can appeal for a review of the decisions of the president of the blowers' union.

The skilled branch of the glass-bottle industry is about 90 per cent organized. During the nineties and the early part of the last decade strong nonunion centers were to be found in New Jersey, western Pennsylvania, and Indiana. Vigorous organizing campaigns by the union resulted in the organization of many of the nonunion plants, until today a high degree of organization has been reached. To a considerable extent, however, nonunionism still flourishes in the gas belt of Indiana and in western Pennsylvania. Of the union manufacturers the majority are members of the employers' association, and the resolution adopted in 1913 resulted in the entrance of about thirty-five independent manufacturers. Those who still remain without

<sup>1</sup> Minutes, Final Conference, Manufacturers' Report, 1913, p. 4.

<sup>2</sup> Minutes, Final Conference, Blowers' Report, p. 19.

the Association feel that the benefits to be gained are not worth the expense of membership, inasmuch as they receive the same terms from the union as do those manufacturers belonging to the Association. It has also been said that a number of these independent manufacturers join the Association when they have grievances to be considered and withdraw when their grievances are passed upon and adjusted.

### THE MAKING OF THE AGREEMENT

Unlike those national agreements which provide only the machinery for the settlement of disputes and which leave to the local unions the formulation of working rules and, in some cases, wage rates, this agreement fixes in detail practically all of the conditions of employment of the glass-bottle makers. The local unions can legislate only upon such matters as are concerned with the internal government of the union. When, however, some unforeseen question arises during the year an attempt is first made to settle the matter in conference between the factory committee<sup>1</sup> and the employer, and if they are unable to arrive at an agreement the question is referred to the president of the union.

All questions relating to prices and rules which are not settled to the satisfaction of both parties during the year, and those matters, already in the agreement, which one or the other party wishes to have amended, are considered at the May preliminary conference. The questions not settled at this conference and those arising between the preliminary and final conferences receive consideration at the latter conference. The matters upon which adjudication is desired are usually submitted to the conferences in the form of resolutions from local unions or of requests from individual manufacturers, but all of such resolutions and requests must conform to the *modus operandi* described earlier in this paper.

The members of the executive board of the Glass Bottle Blowers' Association act as the representatives of the union at the conference. These members are elected annually at the convention of their organization and hold office, therefore, only for one year. Although the acts of the representatives of the union thus frequently become the

<sup>1</sup>The factory committee is a committee of workmen in a shop chosen by the employees in that shop to represent them in conferences with the employer.

subject of review by their constituents, the union conferees have throughout the conference debates shown unusual independence of judgment. That, however, their conduct has reflected the mature opinions of the majority of the union is attested by the fact that many of the members of the executive board have been reelected over a number of years. Indeed, the president of the Association, an *ex officio* member of the board, has now held that position for almost twenty years.

The representatives of the union have full power to settle questions without referring the matter back to their organization. Nor do they go to the conferences instructed to take one stand or another. Attempts have, to be sure, been made from time to time to instruct the representatives to follow out a certain line of action or to strip them of the authority to settle the more important questions arising at the conference. These attempts have, however, always been met by the concerted opposition of the officers and of the majority of the membership. Thus, early in the history of the agreements resolutions were introduced at a convention removing the power from the conferees to settle anything relating to price lists, apprentice laws, or market money. These resolutions were received with the following comment from the president of the union:

To adopt the amendment would simply deprive your officers of all executive power and make them mere figureheads to represent the organization. Take away the power to concede or alter anything in the price list, apprentice law, or market money and you leave nothing of any importance on which to treat with the manufacturers' wage committee. No committee of manufacturers would meet your committee unless it had full power to act and bind the association, and if this convention takes this power from them it would be more sensible to put your demands on paper and send them by post, saying that such is the will of the conventions, than to send your representatives there merely to state it. This convention does not represent all the glass trade, only the working portion of it. Your employers represent the other portion. They also have an association and appoint a committee to present their demands in conference. If they adopt the same principle as is embodied in this resolution or amendment, giving their committee no power to act on the main questions, do you for a moment think a settlement would ever be effected? No man with any self-respect could accept office under such restrictions.<sup>1</sup>

<sup>1</sup> Proceedings, United Green Glass Workers, 1894, p. 24.



Again, in 1906, the attempt was made to instruct the representatives of the union on a definite proposition. Here too the attempt was unsuccessful. In this case the resolution providing that the "30th annual convention instruct our president and executive board to entertain no proposition for reduction in wages the coming season" was replaced by the resolution "that it is the sense of the convention that we do not deem it advisable to accept a reduction for the coming season."<sup>1</sup>

The members of the executive board of the manufacturers' association are similarly the representatives of that organization at the annual wage conferences. Instead, however, of being elected annually by the convention, they are appointed annually by the president of the organization. Like the union conferees, they are sent to the conferences uninstructed. But here, as in the case of the union, dissatisfaction with the work of their representatives has at times been expressed by manufacturers. These objections have arisen generally from two sources. In the first place, the manufacturers of handmade ware have long protested that their representation upon the wage committee has been inadequate and that all legislation is framed to benefit the machine manufacturers at their expense. Accordingly, in 1912 a number of the hand manufacturers withdrew from the annual conferences on the ground that those conferences were "dominated by the machine manufacturers, and we do not care to have the machine manufacturers adjust the wages for the hand blown."<sup>2</sup> The other protest arises from those manufacturers who feel that their executive committee has not presented the case of the manufacturers as vigorously as it might, nor has it been insistent enough in pressing their demands. From these feelings grew out the request that the president appoint, in addition to the usual committee, two alternates to be selected "from the twenty or more members who have protested present conditions" with the power to attend the wage conference."<sup>3</sup>

At the preliminary conference of 1914 a number of manufacturers and members of the National Bottle Manufacturers' Association "asked permission to confer with the members of the committee

<sup>1</sup> Proceedings, Glass Bottle Blowers, 1906, p. 228.

<sup>2</sup> *Id.* 1912, p. 171.

<sup>3</sup> Proceedings, Annual Meeting of the National Bottle Manufacturers' Association, August, 1914.

representing the manufacturers and desired to be heard concerning matters in which they were interested." Their request was granted. When the meeting was called to order, it was announced "that the meeting would be of an informal nature and each person present was permitted to talk upon any matters that were coming before the Joint Wage Committee. . . . Nearly all of the visiting members had more or less to say, and many things were explained in regard to the methods and manner of conducting the conferences. . . . The visiting members stated later that they had learned many things concerning the joint conference which they did not know, and before retiring expressed themselves as being much better satisfied than when they came."<sup>1</sup>

While these movements of protest have no doubt exerted some influence on the conduct of the conferees, neither in the case of the union nor in that of the manufacturers' association have they effected any change in policy concerning the relation of the representatives to their respective organizations. All representatives attend the annual conferences as exponents of the sentiments of their constituents; rarely, however, do they attend bound by specific instructions.

No formal system of voting is provided for in the agreement, but it is the prevailing practice in the conferences for the manufacturers' representatives and for those of the union to vote as units. A mere majority of the members present, therefore, is not sufficient to carry a measure. The measure must be agreeable to a majority of the representatives of each party before it can become a part of the agreement.

On several occasions the conferences have resulted in deadlocks. Under such conditions it has been the custom for the conference to adjourn and for the majority of the establishments to resume operation under rules and prices of the preceding year in the hope that the following year would find the union or the manufacturers less obdurate. The climax of a series of demands by the manufacturers for substantial reductions in piece rates came in 1906, when the representatives of the employers persisted in demanding reductions which the union refused to grant. During the debate on the proposition Mr. Ralston, president of the manufacturers' association,

<sup>1</sup>Proceedings, Preliminary Wage Conference, Manufacturers' Report, 1914, p. 3.

suggested that "the matter be submitted for arbitration to a judge of the courts."<sup>1</sup> The suggestion was not acted upon. Indeed, the consensus of opinion in the trade seems to be opposed to the submission of major issues to arbitration. Both employers and employees prefer to thresh out the matters in conference and, when it is found to be impossible to reach an agreement, to work in a state of armed truce for one or more years under the rules of previous years.

When it was stated above that in the event of a deadlock the manufacturers would open their plants under the rules and prices in operation during the preceding year, it should have been noted that these resumptions of work frequently took place some time after the annual conference had adjourned. During this period between the adjournment of the conference and the acceptance by the manufacturers of the union's ultimatum the agreement may be said to have been suspended. For example, at the conferences in 1905 the manufacturers demanded a general reduction in piece rates of  $33\frac{1}{3}$  per cent. This reduction the union would not concede. The manufacturers, therefore, moved to adjourn without setting a date for a further conference. On September 1, 1905, the president of the Glass Bottle Blowers' Association issued a circular letter containing the following statement:

Up to the present we have heard nothing from the manufacturers' association. Those among their members who insisted on a reduction and favored adjourning the conference until the same was secured will doubtless remain idle as long as they possibly can, while others in that association, coupled with the independent manufacturers, will begin starting their factories early this month.<sup>2</sup>

From this statement it is seen that for several months, at least, after the adjournment of the final conference the industry was

<sup>1</sup> Proceedings, Glass Bottle Blowers, 1906, p. 59.

<sup>2</sup> They could open their factories and employ members of the union under the previous season's list and rules; for on August 8, 1905, President Hayes had issued the following circular letter to the trade: "Manufacturers who desire can engage our members to work by agreeing to pay last season's wages, and if any of them are doubtful about our ability to hold out and want assurance that they will be given the benefit of any settlement that may hereafter be made different from that which we demanded (last year's list and rules), branches are authorized to say to such employers that they will be given the advantage of any settlement that may be made later on and from the date upon which they started to work."

virtually in a state of lockout, or, more accurately, the agreement was temporarily suspended. The same situation arose in 1909. Again the manufacturers' demand for a substantial reduction had been refused by the union. Accordingly the conference of July 26, 1909, disbanded, and the manufacturers did not open their plants. Early in September, however, the American Bottle Company agreed to accept the concessions of the union. Moved by this break in its ranks, the manufacturers' association sought another conference, at which an agreement was finally reached.<sup>1</sup>

In both instances, and in fact in all other similar cases during the life of the agreement, the strength of the union, in that it is virtually impossible to run nonunion shops in the glass-bottle industry, forced the employers to resume operation under conditions not entirely satisfactory to them. Technically, of course, this delay in opening a plant might be described as a lockout. It has, however, not been so regarded by the parties to the agreement. Even though conferences were adjourned without reaching any agreement and the manufacturers were forced, probably because of the superior strength of the blowers' organization, to employ the men at terms unsatisfactory to themselves, yet in the following year they showed confidence in the efficacy of a system of collective bargaining by again entering the conferences with their employees.

#### THE SETTLEMENT OF DISPUTES ARISING UNDER THE AGREEMENT

In an agreement which specifies, in such detail as does the present one, practically all of the conditions of employment the matters which arise during the year are as a rule purely interpretations of the agreement. For example, a new bottle is introduced in one of the factories and a dispute ensues as to the price to be paid for blowing the bottle; since the agreement states that the bottle shall "be rated at the same price and subject to the same rules in regard to weight as those specified in the bracket which they resemble in size, shape, weight and finish,"<sup>2</sup> but little room is left for any great differences of opinion. The same might be said of any question that might

<sup>1</sup> Proceedings, Glass Bottle Blowers, 1910, p. 11.

<sup>2</sup> "Wage Scale and Working Rules," sect. 34, in *Blast*, 1914-1915.

conceivably arise under the agreement. So inclusive are the annual agreements and so definite are their terms that probably the majority of disputes arising in various localities are settled by merely turning to a particular rule in the agreement and applying it to the case in point. On the other hand, disputes have been observed under the agreement where there was no question of the interpretation of rules but where one or the other of the parties deliberately violated or disregarded the agreement.

The first step in the adjustment of disputes under the agreement consists in referring the matter to a conference of the employer and a factory committee. Most disputes are settled in that conference. When, however, the conferees are unable to agree, the question is referred for settlement either to the president of the union or to one of the executive board of that organization whom the president designates as his representative. The president's decisions are final unless reversed at the following joint conference. Although the president of the union has been acting as arbitrator since 1902, his decisions have been but rarely reversed. The great majority of his adjudications are concerned with the determination of prices on new ware, samples of which are sent to the central office of the union for his inspection. In those cases where he has decided upon a certain price and that price is found by the joint conference to have been too high, the manufacturer is reimbursed for the excess wage payments; conversely, a decision in favor of the employer, which might be reversed by the joint conference, forces the employer to make up the difference in wages. Instituted originally at the suggestion of the employers,<sup>1</sup> the system of delegating to the president of the union the power of interpreting rules and of settling disputes has, during its existence of twelve years or more, worked admirably. With hardly an exception the decisions made by the president during his incumbency have met with general approval; and no record is as yet to be found of any suggestions, from either workman or manufacturer, which would so modify that section of the agreement as to remove from the president of the Glass Bottle Blowers' Association his present powers.

The history of the operation of the agreement has been notably free from strikes and lockouts. The great centralization of power in the hands of the national organization, and the apparent general

<sup>1</sup> Minutes, Preliminary Conference, Blowers' Report, May, 1902, p. 21.

opinion among the members of the union that such centralization is wise, has resulted in a universal support by the subordinate unions of the mandates of their national officers and of the decisions of the joint conferences. When, for example, a general reduction in piece rates was adopted by the conference, several local unions in San Francisco expressed their dissatisfaction with the agreement and struck. This violation of the agreement was met with prompt action by the national officers, who ordered the strikers back to work. The strikers first denied that they had stopped work, but after a few days, when the charge was proved, they returned to work under the prices and rules against which they had revolted.<sup>1</sup> The action of the national officers was upheld later by the national convention of the union.

Similarly, among the manufacturers, the attempts to violate the agreement by locking out the employees or by running shops under rules contrary to those adopted by the conferences have been few and far between. In this case, however, compulsion upon the manufacturers has not come from the manufacturers' association. This organization, unlike the Glass Bottle Blowers' Association, has little control over its members and can, therefore, do little in forcing its members to observe the terms of the joint agreements. The following debate at the conference of 1905 indicates the position of the manufacturers' association in enforcing upon its members the decisions of the joint conference:

Mr. Hayes stated that it was a sort of rule among his predecessors at these conferences to ask the manufacturers whether they would abide by the decisions of the conference, but such a course has not been his policy, because he always assumed that the agreement would be lived up to by all of the manufacturers represented by the committee, but during the past year some had violated the agreement and some had intimated that the executive committee has been accused of extending special favors to some manufacturers while refusing them to others. . . . The chairman (a manufacturer) stated that when the agreement is signed it becomes a moral obligation of all manufacturers employing union labor to live up to it, but that there was nothing in the hands of the committee or the individual members thereof to enforce it. Any manufacturer could refuse to obey it, the power to enforce being wholly in the hands of the blowers.<sup>2</sup>

<sup>1</sup> Proceedings, Glass Bottle Blowers, 1910, p. 153.

<sup>2</sup> Minutes, Final Conference, Manufacturers' Report, 1905, p. 4.

Although the power to compel obedience to the agreement and to the decisions of the president of the blowers' association in his settlement of disputes resides in neither the employers' association nor the union, yet the desire of the manufacturers generally to avoid any action that might lead to a discontinuance of the annual conference, and the strength of the union, which enables it to bring recalcitrant employers into line by threatening to withdraw their working force, are the two factors which operate to prevent more frequent and more serious breaches of the agreement.

It will have been observed in the foregoing discussion that the few suspensions of the agreement have arisen not from dissatisfaction with the adjudications of minor issues under the agreement, but have in reality constituted revolts against the settlement of the major issues embodied in the agreement. For instance, at the preliminary conference of 1909 Mr. Hayes reported that some of the manufacturers had refused to be bound by the agreement and had operated their factories during the so-called "summer stop" agreed upon by the last conference.<sup>1</sup>

Here, obviously, there was no question of the interpretation or application of a rule of the agreement, but a deliberate disregard of a rule whose meaning and intent was plain. This situation, which is in a way a typical one, suggests the following general proposition concerning the operation of the agreement: Where the national agreement lays down in detail working rules and piece rates, leaving to local adjustment matters of purely secondary importance, the disputes arising between conferences are likely to be, as they are in this particular instance, protests not against interpretation of the agreement, though there are undoubtedly some disputes of such a character, but against attempts to enforce the plain letter of the agreement. The remote design behind such protests is, of course, the desire to stir up a sentiment against the objectionable practice or rule and to have that rule amended or rejected at the following conference.

The practical absence of any widespread violation of the agreement can be attributed primarily to two factors: (1) the character of the persons in the industry and (2) the national character of the agreement.

<sup>1</sup> Minutes, Preliminary Conference, Manufacturers' Report, 1909, p. 8.

1. The members of the Glass Bottle Blowers' Association have always been and are today highly skilled workmen, whose earnings were for many years far above those of skilled workmen in other industries. The high wages earned and the skill required to perform the work have apparently combined to form workmen of conservative instincts and of mature judgment. The character of the workmen has again and again been evidenced in the selection of officers of a high type and in the general support by the membership of such legislation as the voluntary reduction of piece rates, which would in other industries have engendered the deepest hostility among the rank and file of the organization. In addition, problems following the introduction of machinery, of the gravest import to all members, have been met, if not always with perfect assurance and without petty squabbles, at least in an open-minded and intelligent fashion.

2. The national character of the agreement, which lodges in the national officers of the union the responsibility for the content of the agreement and for its enforcement, imposes upon these officials a personal interest in the successful working of the agreement which makes for a more diligent and more stringent enforcement of its terms.

From the standpoint of the machinery of the agreement, also, that clause which designates the president of the blowers' association as the arbiter of interconference disputes probably inspires in the members of the union a respect for the agreement and a belief in its fairness which might otherwise not have existed. The adherence of the employers to the agreement is perhaps even easier to explain. In the first place, this system of collective bargaining, by maintaining uniform wage scales and working rules throughout the whole of the industry, has eliminated the objectionable inequalities, as between different employers, that are an inevitable accompaniment of a decentralized system of collective bargaining. Second, the history of the agreement has been such as to modify to a considerable degree the attitude of the employers toward their workmen. For on three different occasions the union, after much pressure to be sure, has agreed to substantial reductions in wage rates.

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LEO WOLMAN



## XXXI

### THE SAN FRANCISCO BUILDING TRADES<sup>1</sup>

THE brewery trades and the building trades represented the two extremes among the trade-unionists of San Francisco as regards collective bargaining and trade agreements. The brewery trades had long and effectively upheld such policies, while the building-trades unions had as vigorously opposed them. Yet both groups had completely dominated their respective fields and had secured the greatest returns for their members.

The effectiveness of the Building Trades Council was due to a great extent to the thoroughness of organization existing among the building-trades craftsmen, which was made possible by the measures and policies adopted by the Council and its executive officers. It spent little or no time in idle talk and in passing meaningless resolutions. It *did* things, and while the methods employed at times may be open to criticism, one is compelled to admit that it obtained higher wages, shorter hours, and better conditions of employment for its members than would otherwise have been possible.

In the first place, the Council stood for the rigid enforcement of the working-card system, whereby every worker was compelled to carry his working card, showing that he was a member of his union in good standing. The State Building Trades Council, through its general executive officers, issued quarterly working cards to the local building-trades councils, which were then reissued to the affiliated unions, and by them to their paid-up members. These cards were of different color for each quarter of the year.

The constitution and by-laws of the State Building Trades Council declared that this working-card system was to be "enforced in accordance with the local law and the objects of the State Building Trades Council." The San Francisco Building Trades Council

<sup>1</sup>From the University of California *Publications in Economics*, Vol. IV (1918), pp. 331-342.

strictly enforced this policy. Sections 1-5 of Article II of the by-laws of the local council, which related to this matter, were as follows:

Section 1. Quarterly working cards shall be issued to unions quarterly two weeks prior to issue, bearing the seal of the Council and the signatures of the President and Recording and Corresponding Secretary. It shall be the duty of the Financial Secretary of each affiliated union to attach his signature to each card issued to the members thereof.

Section 2. It shall be the imperative duty of all members of unions affiliated with this Council to carry the current Quarterly Working Card of the State Building Trades Council, or a permit issued in lieu thereof, while at work. Any member working without said card shall be subject to a fine of one day's wages for each day he so works, and must immediately cease work upon the request of any member of any affiliated union until such time as he secures a current Quarterly Working Card of the State Building Trades Council, or a permit issued in lieu thereof.

Section 3. It shall be the duty of all members of unions affiliated with this Council to show such working card when requested to do so, or when challenged by any duly accredited Business Agent of this Council. Any member refusing to show his card when requested to do so shall be subject to a fine of not less than one day's wages.

Section 4. Each craft when starting to work on a job shall appoint a steward for said job. Stewards shall see that every man working upon the job carries the current Quarterly Working Card of the State Building Trades Council. Stewards of the different crafts shall interview the workmen of each craft employed thereafter on said job, and ascertain before 8 A.M., between 12 M. and 1 P.M., or after 5 P.M. if they have the current Quarterly Working Card of the State Building Trades Council. Stewards neglecting to perform their duty or failing to immediately notify the Council of any man working without such card shall be subject to a fine of not less than one day's pay.

Section 5. Each member of every union affiliated with this Council, upon going to work on any job where other workmen of the building trades are employed, shall, before beginning work on said job, ascertain if other workmen thereon carry the current Quarterly Working Card of the State Building Trades Council. Should any workman without the current Quarterly Working Card work on any job, it is the duty of each and every member of affiliated unions working thereon to immediately notify the Council. Failing to do so, such members of affiliated unions shall be subject to a fine of one day's wages for each day that they work with any workman not carrying the current Quarterly Working Card of the State Building Trades Council.

All matters bearing upon the violation of these sections which in any way concerned the Building Trades Council, and appeals from fines imposed by the local unions, were brought before its executive board. During 1913 and 1914, owing to the stress of unemployment, the executive board had a large number of violations of the above sections brought to its attention. Fines were imposed and sincere efforts were made to enforce the regulations of the Council.

Another matter which made for the effectiveness of the Building Trades Council was the vigorous manner in which the policies of the Council were carried out by those in charge of its affairs. Various means were employed by its officers to crush any and all opposition either to themselves or to the policies for which they stood. At times those in control of the Council's affairs did not hesitate to break up a union if perchance it evidenced any inclination to oppose those in power. Organizations were ousted from the local council and their members declared to be "unfair" even though duly affiliated with their international union and in good standing therewith. At times a rival union was formed for the purpose of coercing some recalcitrant organization into accepting the rulings of the Council. After the old union had been completely coerced, the Council at times ordered the rival organization to be dissolved and its members to apply for admission in the old union. Initiation fees had to be paid over again, and at times it happened that the members of the rival union, who were the means of coercing the old organization, were denied admission to the latter.<sup>1</sup>

<sup>1</sup> An instance of the above is to be found in connection with the plasterers' strike in 1913-1914. In the latter part of 1913 a jurisdictional dispute arose between the plasterers and carpenters regarding which union should have jurisdiction over the framing and nailing up of staff work on Machinery Hall at the Exposition grounds in San Francisco. The Building Trades Council ruled that the work in question belonged to the carpenters, whereupon the plasterers struck. The Building Trades Council then ousted them from membership in the Council and proceeded to organize Plasterers' Local Union No. 1. The president of the Building Trades Council declared that the members of the old union, No. 66, would have to affiliate with the new union before they could again work in San Francisco. The controversy was settled on January 16, 1914; the old plasterers' union, No. 66, withdrew its demands and was reinstated in the Building Trades Council. Those plasterers who had joined Local No. 1 were then informed that if they desired to work at their trade as union men in San Francisco, it would be necessary for them to pay an initiation fee of \$50 and join Local No. 66. Other instances of similar character might be cited.

Another cause of the effectiveness of the Building Trades Council was the permanency of its officials. It had retained the same president since its inception. The tenure of other officials had also extended over comparatively long periods of time. In the case of the Labor Council, on the other hand, no men or set of men had ever dominated its policies for any considerable length of time. Its affairs, as a rule, had been most democratically managed. Permanency in office in the Building Trades Council had been made possible in part by such means as organizing unions to secure votes, dissolving obstreperous unions, hounding those men who had opposed or objected to the policies of the Council's officers,<sup>1</sup> interfering, sometimes by the use of "strong arm" methods, with the election of the officers and delegates of local unions, manipulating the number of delegates allotted each union by the rules of the Building Trades Department of the American Federation of Labor so as to give more than the allotted number of delegates in the Building Trades Council to favored unions, and by similar methods. While the means employed to attain the end desired may be seriously questioned, yet it must be admitted that the permanency in office thereby secured made possible the pursuance of a consistent set of policies which in its turn made for the dominance and strength of the Building Trades Council in the local field.

The Council also reserved to itself the right to refuse at any time to seat delegates sent to it by any affiliated union if those delegates or any of them were objectionable for any cause whatsoever to the delegates already seated in the Council. By this means it was usually able to keep out so-called disturbers or objectors.<sup>2</sup> The Council also reserved to itself the right to expel any delegate or to take away his vote if at any time it desired to do so. By such methods a more unified and cohesive working body was secured whose time was not largely taken up with petty janglings and quarrels as would otherwise have been the case.

<sup>1</sup> By making it impossible for them to obtain or retain employment, by filing false charges against them before the union or the Building Trades Council, and by various other means.

<sup>2</sup> Section 2 of Article II of the constitution of the Council provided that "The Council, however, reserves the right to object to the seating of any, or all, delegates who, in its judgment, are considered undesirable or detrimental to the best interests of the Council."

The Council was effective also because it enforced its decisions and awards. It compelled its constituent unions to abide by its mandates. The Council agreed to affiliate with the Building Trades Department of the American Federation of Labor only upon condition that it be permitted to retain its autonomy and also its power over its constituent unions. There had been fewer strikes in the building trades in San Francisco than elsewhere owing to the rigorous methods and policies pursued by the Council and to its ability to compel the affiliated unions to respect and abide by its decisions. All demands for increased wages, shorter hours, and better conditions of employment had first to be approved by the Building Trades Council. Its decision in the matter was final. There could be no appeal. Any union which refused to obey the decision of the Council was ousted from that body and declared to be unfair. A rival union might then be formed to take the places of the members of the obstreperous organization, and the latter would usually be whipped into line. The Council had always followed this policy of riding roughshod over all opposition within its ranks and at times attempted, though not so successfully, to pursue the same policy in its dealings with other branches of organized labor in San Francisco. By the methods described the Council was able to prevent impossible demands being made by the unions affiliated with it. It watched matters very closely in every part of the local building-trades field and thus prevented many labor disputes that would otherwise have occurred. Whenever labor controversies arose the Council made every effort to adjust them by means of arbitration or otherwise. Although the constitution and by-laws of the Council made no provision for either conciliation or arbitration, it frequently employed both methods for the purpose of maintaining industrial peace.

The Labor Council also believed in, and always attempted to induce its members to adopt, conciliation or arbitration in all labor disputes. In all matters it tried to play fair with the employers. It too was a powerful agency for industrial peace.

As has been noted above, the Building Trades Council as a central organization, as well as its affiliated unions, did not stand committed in any degree to a scheme of collective bargaining based on trade agreements. Its constitution and by-laws contained no provisions relative to the drafting of trade agreements or their use by either the

Council or its member unions. The officials of the Council claimed that it and its member unions should be free and unhindered in their right to change wages, hours, and conditions of employment whenever they desired to do so, and that a system of trade agreements would make the exercise of that prerogative impossible.

Nothing so clearly shows the general attitude of the Council towards this matter as the testimony of its president, Mr. P. H. McCarthy, given before the U. S. Commission on Industrial Relations in San Francisco, September 1, 1914. Upon being questioned by Commissioner John R. Commons, he declared:

We do not believe in those signed agreements that have possession of you Eastern gentlemen. We believe they are contrary to certain conditions within the confines of this country. We believe that they act as incentives to employers and employees alike, and create trouble at about the time of the expiration of the agreement. Everybody knows that they do.<sup>1</sup>

Time limits are very dangerous. Time limits act as incentives to both parties to make certain demands.<sup>2</sup>

We will not sign time agreements, and we believe time agreements are vicious, and we are not engaging in anything that is vicious.<sup>3</sup>

As a consequence of this policy, the Building Trades Council was a party to but two agreements at the time covered by this study (1915). One agreement, that with the Planing Mill Owners' Association, had been drawn up as early as February, 1901, and had been amended and readopted from year to year. It had brought to conclusion a very serious labor struggle waged for the purpose of preventing the use of imported unfair lumber. The other agreement was that which had been drawn up with the Master Painters' and Decorators' Association in June, 1914, following a strike of the journeymen painters for higher wages. Both agreements were the result

<sup>1</sup> U. S. Commission on Industrial Relations, Final Report and Testimony, Vol. VI, p. 5212.

<sup>2</sup> *Ibid.* p. 5211.

<sup>3</sup> *Ibid.* p. 5212. In May, 1917, however, the Building Trades Council sanctioned an agreement drawn up in conference between representatives of the Master Painters' and Decorators' Association and the local District Council of Painters. This is the first instance of collective bargaining based on a trade agreement that has been recorded in the building-trades world for many years past; another agreement of similar character was entered into by these two parties and approved by the Building Trades Council in August, 1906.

of arbitration proceedings. As President McCarthy declared before the U. S. Commission on Industrial Relations, "Whenever the board of arbitration is called in, then we request agreements and agreements are signed up." Otherwise agreements were not resorted to.

The Building Trades Council thus stood committed to a policy antagonistic to the use of trade agreements except in those cases where arbitration proceedings were necessary to settle a controversy between employers and employees.<sup>1</sup>

The building-trades employers of San Francisco were very thoroughly organized into various associations representing the interests of particular groups of contractors. Thus in 1915 there were the General Contractors' Association, the San Francisco Lumbermen's Club, the San Francisco Planing Mill Owners' Association, the Master Housesmiths' Association, the Lighting Fixtures Club of San Francisco, the Master Roofers' and Manufacturers' Association, the Concrete Contractors' Association, the Furniture and Carpet Trades' Association, the Sheet Metal Contractors' Association, the Master Painters' and Decorators' Association, the Erectors' Association of California, the Cabinet Manufacturers' Association of California, the Masons' and Builders' Association of San Francisco, and the California Association of Electrical Contractors and Dealers. At the time this survey was made (1915) all but the last two associations were affiliated with the Building Trades Employers' Association of San Francisco.<sup>2</sup>

Neither the Building Trades Employers' Association nor any of the above-mentioned associations engaged in collective bargaining based on a system of trade agreements. They had been formed primarily for trade purposes. At times a meeting might be held in conference with representatives of a local union or of the Building Trades Council, but this would usually occur after the employers had been notified that a new wage scale was to go into effect or that a certain firm had been declared to be unfair, or that a labor dispute was threatened or had taken place, or after something else of a similar nature had occurred or was about to occur. There were a few cases

<sup>1</sup> COMMISSIONER COMMONS: "Your method here is, you don't make written agreements with the employer?"

MR. MCCARTHY: "Unless where arbitration boards are allowed in."

<sup>2</sup> The Building Trades Employers' Association disbanded in 1917.

of agreements' being signed between the individual employer and the union, but such a practice was the great exception rather than the general rule. Thus in 1915 the Bricklayers' Union had what was known as a "reciprocal agreement," which fair contracting masons and builders signed as individual firms. Undoubtedly there were a few other scattering individual agreements which my investigation failed to disclose, but they were found so seldom among the building-trades unions as not to be considered of any consequence in determining the characteristics of the activities of the particular group of trades under discussion.

The various employers' associations in the building trades did not meet with the union or unions concerned or with representatives of the Building Trades Council to discuss wages, hours, or conditions of employment unless objections to the proposed scale of the union were made by the employers. Mr. Grant Fee, president of the Building Trades Employers' Association of San Francisco, in testifying before the United States Commission on Industrial Relations in San Francisco, September 1, 1914, declared:

There is no collective bargaining in this city, as I understand the term. The system in vogue in this city is: The unions pass a so-called law raising the scale of wages or changing the working conditions; that is referred to the Building Trades Council for their approval; if approved by the Building Trades Council, it is put in force; sometimes notice is given and again no notice is given in spite of the fact that the Building Trades Council say that one of their laws is that a ninety days' notice must be given before a change in wage or working conditions is put into effect. The employer has no voice whatever in making the above-stated rules; the employer's part consists in making what resistance he can; this resistance has met with no degree of success, excepting cases of housesmiths' trouble in the matter of eight-hour day in structural shops. Collective bargaining, as I understand the term, presumes discussion and consultation by the parties concerned before agreements are made. Here there is no such discussion. The so-called agreement is the ultimatum of one party which the other party has no choice but to accept.<sup>1</sup>

<sup>1</sup> In a supplementary brief filed by Mr. Fee with that Commission he declared that "they recognize their power, wielded by a collective demand, but seldom, if ever, deal with any but individual employer unless forced to do so by that employer's referring the demand made upon him to the employers' organization. And this in spite of the fact that the union well knows that the employers have an active organization."



Mr. McCarthy, at the same hearing, described in the following manner the methods used by the building-trades unions in settling conditions of employment :

MR. MCCARTHY. As to the wage?

COMMISSIONER WEINSTOCK. Take a hypothetical case. Suppose the carpenters would decide that they are entitled to an increase, say 10 per cent of the present wage.

MR. MCCARTHY. Yes.

COMMISSIONER WEINSTOCK. Will you explain to the Commission what would be the method?

MR. MCCARTHY. The carpenters would take the matter up in their district council, which embraces all of the carpenters within the confines of the transbay cities. They would then send that out to a vote of the carpenters. That vote would be tabulated and sent in to the district council. If a majority, or two thirds, or whatever this vote did run, the action called for would be tabulated. Then it would be by the district council of carpenters approved and sent, if occasion required, to the general office in Indianapolis for approval; but if it did not, that would be waived—in either event, if it was sent first to Indianapolis it would then go to the Building Trades Council of this city with which the carpenters are affiliated, the Building Trades Council of Alameda County, and then the Building Trades Council would take the matter up with the General Contractors' Association, the builders' exchange, with which some builders doing carpenter work may be associated. We also communicate with every independent contractor in this city who are<sup>1</sup> business agents, and these men would be interviewed in that manner and the subject drawn to their attention.

COMMISSIONER WEINSTOCK. . . . You would send them an official communication?

MR. MCCARTHY. We sure would, because they have an association, and [in the case of] all of those institutions you will find that [there are] men in the same line [who] are not affiliated; those men also have a right to know and a right to pass upon a change of that kind, and as a result our business agent takes the matter up with them.

COMMISSIONER WEINSTOCK. The point is not clear to me yet.

MR. MCCARTHY. What is it that is not clear now?

COMMISSIONER WEINSTOCK. Whether you say to the contractor—whether you simply inform him of your conclusions, or whether you leave it a debatable question.

<sup>1</sup>Evidently an error of the stenographer. Presumably "who are" should read "through our."

MR. MCCARTHY. We inform him as to what action we have taken, of course.

COMMISSIONER WEINSTOCK. That you have decided there shall be a certain—

MR. MCCARTHY. No sir; we haven't done anything of the kind. Don't get away with that. We have decided what we shall ask for, and we are now drawing his attention to it, and those who are not affiliated with us, to the end that if he feels the need of discussion we will so take it up with him and discuss it with him. Mr. Fee was not correct when he stated that we made laws for them. He knew that he was not telling the truth.

COMMISSIONER WEINSTOCK. Then I am to understand that it is left a debatable question?

MR. MCCARTHY. Of course it is a debatable question. There is nothing settled until it is settled by both parties.

In responding earlier in his testimony to a question asked by Commissioner Commons, Mr. McCarthy declared that there was but one agreement existing between the Building Trades Council and the San Francisco Planing Mill Owners' Association. The following discussion then took place:

COMMISSIONER COMMONS. So that all other agreements are simply rules or plans or schedules, and so forth, submitted to them and they sign them individually?

MR. MCCARTHY. No. They are entered into by mutual consent. As outlined by myself here in the beginning, to wit: . . . [the union adopts a schedule], it is passed up to the Building Trades Council, referred by the Building Trades Council to the executive board, by the executive board it is referred to the representative in the field, and those representatives interview each and every individual in that department, get an expression of opinion from them, and only in two instances during the past fifteen years have a majority of those dissented. . . . When they get a majority of employers in favor thereof, at a regular meeting, they decide accordingly, and so notify the employers.

COMMISSIONER COMMONS. As a matter of fact, you recognize that that is not what is usually called collective bargaining?

MR. MCCARTHY. As a matter of fact, Professor, I recognize that that is what is collective bargaining.

COMMISSIONER COMMONS. It is collective bargaining on your side.

MR. MCCARTHY. On every side; on my side and on their side.

COMMISSIONER COMMONS. And individually on their side?

MR. MCCARTHY. No. You are mistaken there, Professor. They have their association. You are in error there. They take it to their association.

COMMISSIONER COMMONS. Do the representatives of your association meet the representatives of their association and jointly agree upon all questions—wages, hours, and conditions?

MR. MCCARTHY. . . . you haven't followed me.

COMMISSIONER COMMONS. I thought I did.

MR. MCCARTHY. . . . When the Council takes this [step], it becomes the law, and then it is a subject of discussion, and not before. . . .

COMMISSIONER COMMONS. You do meet the employer?

MR. MCCARTHY. Absolutely. If there is any objection, then we meet. That is collective bargaining, just and correct.

It is clearly evident, not only from the testimony presented before the Commission on Industrial Relations by Mr. Fee and Mr. McCarthy but also from data secured by personal investigation, that collective bargaining based upon trade agreements, and that trade agreements themselves except in case of disputed points decided by an arbitration board, played no part in the activities of the building-trades unions.

Testimony before the Commission on Industrial Relations as well as personal interviews also disclosed the fact that there was widespread complaint among the building-trades employers relative to the arbitrary methods pursued by the building-trades unions in connection with such matters as would customarily form the basis for a scheme of collective bargaining. It may be that the arbitrary methods employed by the Building Trades Council made possible its unquestioned success in securing higher wages, shorter hours, and better conditions of employment for its members than otherwise might exist. But the fact should never be overlooked that the continued arbitrary exercise of authority and power inevitably causes dissatisfaction and complaint.

Although the Building Trades Council had always opposed the adoption of trade agreements except in case of a disputed point settled by means of arbitration, nevertheless when agreements had been made necessary, the Council had uniformly lived up to the conditions imposed and had compelled its member unions to do

likewise.<sup>1</sup> The ability of the Council to enforce compliance with the terms of such agreements had been due solely to the exercise of this same arbitrary and dictatorial power above discussed. Without it the Council would have been unable to have enforced obedience to its mandates and would thus have degenerated into an ineffective, uninfluential organization, not unlike the other trade councils with which other unions of the Labor Council were affiliated.

Inasmuch as collective bargaining and trade agreements played such an unimportant part in the life and activities of the Building Trades Council, no discussion of the terms of the few agreements that were in force in 1915 is deemed necessary.

IRA B. CROSS

UNIVERSITY OF CALIFORNIA

<sup>1</sup> In reciting the events that led up to the drafting of the agreement in the painters' controversy in 1914, Mr. F. W. Kellogg, one of the arbitrators, made the following significant statement before the Commission on Industrial Relations at San Francisco, September 5, 1914 :

"Mr. McDonald of the Building Trades Council made a very fair statement at our meeting on May 12. And he challenged the employers' association [Master Painters' and Decorators' Association] to point to a single instance where they [the building-trades unions] had broken an agreement after they had entered into it. There was one or two answers to that that claimed that they had broken their agreements in a minor way, but the final admission was that the Building Trades Council had kept its agreements in this city." (Commission on Industrial Relations, Final Report and Testimony, Vol. 6, p. 5481.)

## XXXII

### PATTERNMAKERS' LOCAL AGREEMENTS, CHICAGO<sup>1</sup>

THE methods of bargaining employed by the Pattern Makers' Association of Chicago are in many respects unique in the field of trade-union experience. It is customary to look upon a trade-union as an association that exists for the purpose of securing an agreement with employers through collective action. The terms of such agreements are ordinarily reduced to a written contract which governs the conditions of service in respect to hours, wages, etc. for a specified period of time.

While the Pattern Makers' Association has a scale, all contracts are made with individual employers and the agreements are always verbal. The officials of the Chicago association claim that they have had but one strike in fourteen years, and that this dispute was in reality a lockout rather than a strike. The strength of this organization lies in three things :

1. Patternmaking is highly skilled work.
2. The small number of men ordinarily employed in a shop. Four or five men is the usual number found in a shop, although some shops in the city employ as many as sixteen or eighteen men. The smaller number of men usually involved in a grievance renders the financial strain of maintaining these men till the dispute is adjusted less severe than for most unions. The largest jobbing shop in Chicago is one that the union itself assisted in establishing. The importance of this shop to the successful operation of the methods employed by this union will be described later.
3. Because the patternmakers are a small, compact group of skilled workmen, organization can be made more easily effective. The officers of the union estimate that there are about five hundred patternmakers in the city of Chicago and that 95 per cent of these are members of the union. On account of these conditions, and by

<sup>1</sup>From *Annals*, Vol. LXIX (1917), pp. 208-213.

means of apprenticeship and other rules, the union is able to maintain a more complete control over the supply of labor and the conditions of employment than is possible by many larger organizations.

In negotiating with employers the local association exercises a large degree of freedom. The laws of the Pattern Makers' League, the national union in this industry, do set some limits on the action of local associations affiliated with the national union, but these rules do not place a very strict limitation on local activity. The most important rules of the League are those governing apprenticeship,<sup>1</sup> those prohibiting members from working on piece, premium, bonus, or contract work,<sup>2</sup> and a declaration in opposition to strikes and favorable to arbitration and conciliation as the best methods of adjusting grievances.<sup>3</sup> The rule governing the procedure in the case of a grievance is as follows: The local association must, at a specially called meeting, decide by a two-thirds vote of the members present to lay their case before the employers involved. The Association must then notify the general president, who, either personally or some representative of the League delegated by him, proceeds to the scene of the controversy and endeavors, in conjunction with the local executive committee, to effect a settlement. Failing in this, a local may resort to a strike.<sup>4</sup> This rule of the League is of slight consequence as a means of restricting independent local action. The only advantage that would accrue to the local by complying with the rule would be the strike benefits that the members would receive from the funds of the national body. As the number of members involved in any one dispute is so small, this rule can have little effect on the determination of local policy, even in times of a dispute. The local could carry the financial burden of a dispute, in case it saw fit to do so. However, as stated above, it is contrary to the policy of the Chicago association to engage in strikes. The League has another rule, prohibiting overtime "except in cases of absolute necessity,"<sup>5</sup> which means practically nothing. There are no restrictions on local action in respect to wages and hours.

The wage scale of the Chicago Pattern Makers' Association varies for different kinds of shops. Two principal kinds of shops employ

<sup>1</sup> Constitution, Pattern Makers' League (1913), p. 19.

<sup>2</sup> *Ibid.* p. 22.

<sup>3</sup> *Ibid.* p. 7.

<sup>4</sup> *Ibid.* p. 17.

<sup>5</sup> *Ibid.* p. 22.

patternmakers: First, the general manufacturing plant that maintains its own pattern shop. Some of these shops in Chicago may employ only two or three men, while others may have as many as fourteen to sixteen men. Second, the jobbing houses. Many manufacturing plants find it more economical to let contracts for their patterns rather than to attempt to run a shop of their own. The wage scale in the general manufacturing plants is 50 cents per hour. In some of the jobbing shops the scale is as high as 60 cents per hour.<sup>1</sup>

Lack of uniformity is found likewise in regard to the hours of work. Some plants work as few as eight hours per day, while others work eight and one-half and some as many as nine hours per day. The officers of the union stated that the patternmaking department of the Illinois Steel plant works ten hours per day, but that this is a nonunion shop and the conditions here are unusual.

The Chicago Pattern Makers' Association has a peculiar method of controlling the wage scale and conditions of employment. For many years, when new demands were made, the men were told by the employers that the business could not stand the added expense. The union officers had no positive evidence as to the accuracy of this statement. At the present time, however, the officials of the union can know with reasonable accuracy what the cost of a patternmaking department should be to the employer. This information is obtained through the experience that the union has gained from its relations with the American Pattern and Model Company.

This Company is incorporated under the laws of Illinois and has been in operation now for a period of six years. The stockholders are all members of the Chicago Pattern Makers' Association. The Company was formed by a subscription of shares on the following terms: The shares were issued in denominations of \$50. Any member of the Pattern Makers' Association desiring to take out a share of stock in the Company could do so by the payment of \$5 down and \$1 per week until the face value of the share had been paid in. In this way the plant became a coöperative undertaking, owned and managed by members of the Pattern Makers' Association. This Company is in direct competition with all other patternmaking establishments in Chicago. In fact, it is claimed that this is the largest jobbing plant

<sup>1</sup> This scale does not include the wages paid in the American Pattern and Model Company's shop, which is owned by members of the union.

in the city, as it employs between thirty and forty men. The shop is run with strictly union labor, which is paid the best wages and is given the shortest hours possible. The latest safety devices are used, and the general conditions of employment are as satisfactory as they can be made. The wage scale in this shop is 62½ and 65 cents per hour, according to the grade of work, for an eight-hour day, with a half holiday on Saturdays. It is claimed that both wages and hours are more favorable than in any other shop in the city.<sup>1</sup>

While this shop is a private corporation, the peculiar relation of the union to its management gives the union a decided advantage in its bargaining with employers in other shops throughout the city. These advantages may be summarized as follows:

1. Reasonably accurate information concerning manufacturing can be obtained. Should an employer state that he could not afford to meet the demands of the men, the officers of the union would be in a position to know whether or not the employer was making a correct statement.

2. Should the employer refuse to accede to the demands, the men could be put to work in the shop of the American Pattern and Model Company. From the nature of this trade it frequently happens that these same journeymen can go to the firm for whom they have been working and secure a contract for the pattern work of this plant. The firm has known the work of this journeyman, and, if the firm was satisfied, very often the work will follow the journeyman. In this way the journeymen may, in case of a dispute, actually increase the work of the American Pattern and Model Company. While it is true that the space controlled by this firm is limited, the officials of the union point to the possibility, although it has never been done, of renting additional space and of putting the men to work if conditions in the industry should warrant it. Even if the men were not put to work, they could be put on strike benefits. Whichever way the matter is handled, the effect on the employer is the same, for since the union has so large control over the skilled patternmakers, the employer is practically forced to get any additional workmen through

<sup>1</sup> The American Pattern and Model Company has constructed a new building at a cost of \$20,000. This new building has greatly increased the space and efficiency of its work. No dividends have been declared to date, as all of the earnings have been put back into the plant and equipment.



the union. New men will not be furnished except at the rates demanded. This explains why it is not necessary for the patternmakers to strike.

The foregoing method can be used even though there is no dispute. Whenever the union decides that any particular shop is paying less, or working longer hours, than it should, the men may be withdrawn and put to work in their own shop. When the employer calls for more men, he is informed that the conditions as to wages or hours in his shop are not satisfactory. He is told that if he expects to hold his men, it will be necessary to pay a little more or to give his men better conditions. In this way the union has used its relations with the American Pattern and Model Company to improve working conditions for its members.

The relation of the union to this Company gives the union a line upon another problem in the industry. For a long time one of the principal menaces to standard conditions was the small patternmaker who would underbid the union scale in order to get a job. Having secured the contract, he would work long hours, and if he required help on the job he would pay the lowest rates. More because of the hours worked than the wages paid, this small patternmaker was a disturbing factor to the industry. Two things are accomplished through the American Pattern and Model Company which are very useful to the union in its attempts to deal with this problem. Some of these small jobbers are members of the union. Frequently this fact is found out through the Company, in this way. The Company has submitted a bid on a job and fails to secure it. Being an interested party, the officials of the Company make inquiries as to who obtained the work. Thus members of the Pattern Makers' Association who are inclined to break down union standards may be detected and thereafter disciplined. In the second place, the jobbers may undertake to cut prices for jobbing work with the view of underbidding the American Pattern and Model Company and thus driving the Company out of business. However, the Company has the advantage in competition of this character, because it does not have to earn a profit. The stockholders are more interested in continuous employment than in the dividends declared on their shares. Therefore this company can afford to take work at cost of production and continue to operate indefinitely on that basis. Besides, the small

jobber cannot handle the larger orders, because he is not equipped, either as to space or tools, for handling the larger work; therefore this kind of competition is restricted to the smaller jobs. The power of the union through its connections with this Company, whether considered in its relation to the small jobbing competitor or to the employer unwilling to pay the scale, is in a large measure a potential force. How extensively it is used depends upon the urgency of the case.

In this unique way a small compact group of skilled workmen have organized and carry on regular trade-union functions. Agreements with the employer, while conforming to the normal representative methods through union officials, are more completely individualized than is usual in collective trade-union action. The agreement is always verbal, and because of the character of the work it is frequently in respect to a particular man. It may happen that only a very few men are capable of making the kind of pattern specified. But whether this be the case or not, the officer of the union is called upon to furnish a specified number of men who are capable of doing a definite kind of work. Through its connections with the American Pattern and Model Company the union holds a strategic advantage in its endeavors to protect and improve working conditions that is possessed by few, if any, other unions in the country. No attempt is here made to argue that the experience of this union can be extended successfully to other organizations. The information is presented to show what different methods may be employed by trade-unions as aids in collective bargaining.

F. S. DEIBLER

NORTHWESTERN UNIVERSITY

### XXXIII

## THE SETTLEMENT OF DISPUTES UNDER AGREEMENTS IN THE ANTHRACITE INDUSTRY<sup>1</sup>

IN THE approaching conferences between the anthracite operators and representatives of the mine workers on the renewal of the agreement which expires on March 31, 1916, the method of settling "grievances" arising during agreements has already been forecasted as one of the most important questions. At the tri-district convention of the United Mine Workers held last September at Wilkesbarre, Pennsylvania, demands were formulated which included the establishment of additional machinery for conciliation in each district, less delay in the settlement of disputes, and the placing of such fundamental questions as detailed wage scales and conditions of work within the jurisdiction of the conciliation machinery provided for by agreements.<sup>2</sup>

The full significance of these demands cannot be appreciated unless they are considered in their relation to the developments and the tendencies that have been manifested in the history of conciliation and arbitration of grievances since the award of the Roosevelt Anthracite Coal Strike Commission was made in 1903. While this award furnished the principles and the chief machinery for settling disputes and grievances in the establishment of a Board of Conciliation for the entire Pennsylvania anthracite field, there have been at least two important tendencies in the adjusting of grievances arising under the agreements made subsequent to the award. One is seen in the development of additional machinery for conciliation of matters before they reach the Board of Conciliation. This development

<sup>1</sup>From *Journal of Political Economy*, Vol. XXIV (1916), pp. 254-283.

<sup>2</sup>The "tri-district convention" is composed of delegates from the three districts of the United Mine Workers of America in the Pennsylvania anthracite field. This convention formulates and adopts a series of demands upon the operators which later become the principal issues in the negotiations of agreements.

has taken the form of methods by which questions can be settled locally at the collieries or in the districts in which they arise. The other tendency has been toward the settlement by the system of conciliation and arbitration of matters of far greater importance than were originally contemplated. This development has been due not only to the fact that new and unforeseen questions arose, such as the introduction of new coal-cutting machines, but also to the facts that increasing emphasis has been given to matters that were within the jurisdiction of the conciliation and arbitration system and that greater confidence in the efficacy of such a system to settle disputes has been felt. Among the effects of these two developments have been a strengthened prestige and an increased membership of the United Mine Workers in the anthracite field, an effective means of educating immigrant workers in unionism and in collective relations with their employers, and, apparently, a more firmly established basis for collective bargaining in the industry.

Some of the more important features of the evolutionary development of the conciliation and arbitration of disputes under the agreements may be indicated by reviewing (1) the development of the machinery of conciliation and arbitration of these disputes, (2) the working of this machinery in practice, and (3) the general character of the matters coming up for settlement as well as of the settlements themselves.

## I. THE DEVELOPMENT OF METHODS OF SETTLING DISPUTES

Two methods of adjusting disputes and grievances have been in existence ever since 1903, when the award of the Anthracite Coal Strike Commission was made. One method was conciliation, at first by a bipartisan Board of Conciliation for the entire anthracite field, and later by local and more direct agencies and means in addition to the central board. The other method was arbitration by umpires appointed by the federal circuit court in the anthracite section of Pennsylvania. To these umpires are referred matters which cannot be settled by the Conciliation Board. The method of conciliation has undergone several important developments, while the method of arbitration has remained practically unchanged since 1903. The development of conciliation methods may therefore be reviewed in some detail.

As constituted by the Anthracite Coal Strike Commission's awards, the plan of conciliation was as follows :

IV. The Commission adjudges and awards : That any difficulty or disagreement arising under this award, either as to its interpretation or application, or in any way growing out of the relations of the employers and employed, which cannot be settled or adjusted by consultation between the superintendent or manager of the mine or mines, and the miner or miners directly interested, or is of a scope too large to be so settled or adjusted, shall be referred to a permanent joint committee, to be called a Board of Conciliation, to consist of six persons, appointed as hereinafter provided. That is to say, if there shall be a division of the whole region into three districts, in each of which there shall exist an organization representing a majority of the mine workers of such district, one of said Board of Conciliation shall be appointed by each of said organizations, and three other persons shall be appointed by the operators, the operators in each of said districts appointing one person.

The Board of Conciliation thus constituted shall take up and consider any question referred to it as aforesaid, hearing both parties to the controversy, and such evidence as may be laid before it by either party ; and any award made by a majority of such Board of Conciliation shall be final and binding on all parties. If, however, the said Board is unable to decide any question submitted, or point related thereto, that question or point shall be referred to an umpire, to be appointed, at the request of said Board, by one of the circuit judges of the third judicial circuit of the United States, whose decision shall be final and binding in the premises.

The membership of said Board shall at all times be kept complete, either the operators' or miners' organizations having the right, at any time when a controversy is not pending, to change their representation thereon.

At all hearings before said Board the parties may be represented by such person or persons as they may respectively select.

No suspension of work shall take place, by lockout or strike, pending the adjudication of any matter so taken up for adjustment.

It will be noted that the award provided for (1) local conciliation by superintendents or managers of the mines with the miners directly interested, without however providing for any machinery for formal methods ; (2) conciliation, by a joint committee or board representing operators and workers of the entire industry, of disputes on all questions which (a) cannot be settled locally and (b) are of too great a scope to be settled locally, the majority decision of the board to be final and binding.

The local settlement of disputes was merely inferential from the provisions of the award, and no specific provision for such settlement was made in any agreements until 1909. The Board of Conciliation, however, early in its existence recognized the inference in the 1903 award. At its organization meeting the Board provided by resolution that grievances must, in the effort to secure settlements without resort to the Board, be referred, *seriatim*, (1) to the foremen of mines, (2) to company superintendents, and (3) to the two members of the Board in the particular district, who must first confine their efforts to getting the operators concerned to see the complainants and consider the grievance.<sup>1</sup> The object of this resolution was to compel the employer to deal directly with the complaining employee,<sup>2</sup> as well as to secure as large a number of local settlements of disputes as possible. This resolution was in force for six years and was the forerunner of the following provision of the agreement of 1909:

Any dispute arising at a colliery under the terms of this agreement must first be taken up with the mine foreman and superintendent by the employee, or committee of employees directly interested, before it can be taken up with the Conciliation Board for final adjustment.

Still no local machinery was definitely provided for the settling of disputes, the employers insisting on dealing with their employees as directly as possible and without recognizing the union to such an extent as to concede a provision for permanent or regularly constituted committees representing the local bodies or organizations of mine workers. The question of the convenience of local conciliation methods thus became involved in the question of recognition, and the status of conciliation as fixed in 1903 underwent no material change until 1912.

The mine workers in 1912 made a specific demand for "a more convenient and uniform system of adjusting local grievances within

<sup>1</sup> F. J. Warne, "Trade Agreement in the Coal Industry," *Annals*, September, 1910, pp. 91-92.

<sup>2</sup> This procedure had already been provided for so far as the union was concerned by the constitution of the United Mine Workers of America, which provided that whenever any dispute arises between the members of a local union and their employers it is the duty of the officers of the local union concerned to endeavor to bring about a settlement by peaceful means. If amicable methods fail, then the local union officers may notify the district officers. If the district officers fail to bring about a peaceful settlement, they may order a strike. See Article X, Section 1, of the constitution.

a reasonable time limit." The agreement of 1912 contained the following provision:

(d) At each mine there shall be a grievance committee consisting of not more than three employees, and such committee shall under the terms of this agreement take up for adjustment with the proper officials of the company all grievances referred to them by employees who have first taken up said grievance with the foreman and failed to effect proper settlement of the same. It is also understood that the member of the Board of Conciliation elected by the Mine Workers' organization or his representative may meet with the mine committee and company officials in adjusting disputes. In the event of the mine committee failing to adjust with the company officials any grievance properly referred to them they may refer the grievance to the members of the Board of Conciliation in their district for adjustment, and in case of their failure to adjust the same they shall refer the grievance to the Board of Conciliation for final settlement, as provided in the Award of the Anthracite Coal Strike Commission and the agreements subsequent thereto, and whatever settlement is made shall date from the time the grievance is raised.

It will be noted that the above clause provided for two additional steps in conciliation intermediate between the direct settlement of disputes by local mine managers or superintendent and employee or employers interested and the reference of disputes to the Conciliation Board, as follows:

1. Reference to grievance committees of employees at each mine, the committees to deal with the officials of the company owning the mine;

2. References to the two members of the Board of Conciliation of the district, one of whom, according to the system already in existence, represents the employers and the other the workers.

Since 1912 a new feature has been evolved in the form of "general grievance committees" composed of representatives from local communities. These committees exist among the employees of certain companies, notably the Delaware and Hudson, in some sections of the field, and among the employees of an entire section, as in the case of the Schuylkill region. They are not provided for in the agreement and are not recognized by the Board of Conciliation. Their origin seems to have been in the work of local grievance committees which, according to the terms of the 1912 agreement, met with company officials within sixty days after the agreement was signed, to prepare

statements "setting forth the rates of pay to be certified to the Board of Conciliation." For purposes of convenience, it appears, certain companies met with representatives of all the local grievance committees from their own collieries, and these representatives afterward undertook to become separate entities. They first attempted to make new adjustments in the wage scales involving changes in the system of differentials, and later tried to deal collectively with general questions affecting the mine workers. Not only were they not recognized by the employers and the Board of Conciliation, but their existence has been fought by the leaders of the union. In the 1914 convention, for example, of the United Mine Workers in District No. 1 the question occasioned a good deal of strife and the union was well divided. It appears to be clear that those who were critical of the administration in the union were disposed to side with the advocates of general grievance committees and that the controversy assumed a somewhat political character within the union.

Whatever may have been the influence of this faction in shaping the 1915 demands, it is significant that in addition to a demand for "more simplified and speedy methods of adjusting grievances" there is now a demand for conciliation of questions involving the "arrangements of detailed wage scales and the settlement of internal questions both as regards prices and conditions" by reference to "the representatives of the operators and miners of each district." If the last-named demand is acceded to, not only will the machinery for the adjustment of disputes under the agreement be enlarged but the assignment of the larger questions involving wage rates and conditions of work to the field of its jurisdiction will greatly add to the importance of the local adjusting bodies.

## II. THE CONCILIATION AND ARBITRATION PLAN IN PRACTICE

The actual operation of the machinery of settling disputes and grievances arising under agreements may be reviewed briefly under the following heads: (1) the conciliation plan in practice, (2) the arbitration plan in practice, and (3) cessations of work occurring during agreements.

1. *The conciliation plan in practice.* With the plan of conciliation, as it has developed up to the present time, in mind, its work



in actual practice suggests several points for special consideration. Among these are the appellate principle in the reference of matters coming up for settlement, the tendency toward settling disputes as near to the point of impact as possible, the frequency of disputes and grievances, the effects of conciliative methods on the numerical strength of the union, the relation of the immigrant mine worker to the conciliation plan, and the importance of the personal equation in settling disputes under the conciliation plan.

a. There are no provisions concerning appeals from decisions made at any point in the series of references except the provisions setting forth the finality of the decisions of the Board of Conciliation and of umpires. From the decisions of the Board and of the umpires, according to an explicit provision in the 1903 award and in the subsequent agreements, no appeals can be made, although on one occasion an appeal was made, with the consent of both sides, to a member of the federal judiciary for the settlement of a question on which an umpire and the operators' representatives on the Conciliation Board disagreed. This, however, was an extraordinary case for which no provision had been conceived. While there is provided a method of progressive reference of disputes, starting at the point of impact at the colliery itself and ending with an outside umpire named by an outside authority, the possibility of judicial review is very slight. There are three points in the series of references where disputants can present their case to a third party—the district Board members, the Conciliation Board, and the umpire—and where the element of review and of adjudication seems to exist. At the two other points—the complaining employee and mine boss, and the grievance committee and the company official—there is no review or adjudication whatever. But even where the first two steps in conciliation fail and the matter in dispute goes to the two members of the Conciliation Board, it does not go as a case on its merits, but as a matter which the two Board members, with their knowledge of the attitude and of the precedents of the whole Board, may be able to settle. Furthermore, even the Board itself is frankly regarded as bipartisan, and while the disputants present their cases in a formal way to the Board for a decision, the element of conciliation is intended to be predominant. In other words, the entire series of references up to the umpire is a series of attempts by representatives of

both sides to a dispute to settle out of court rather than in court, and it is taken for granted in all of the steps in this series, and expressly provided in one, that when a settlement is made it is final because it is a real settlement of the dispute.

The fact that certain precedents have grown up in the Board of Conciliation in the settlement of certain disputes does not essentially invest the Board with judicial authority, although it may be an evidence of a judicial habit. The entire plan of settling disputes under the agreement, therefore, is so constructed as to eliminate, as far as possible, the element of arbitration, or of judicial review, by any other kind of body than a strictly equipartisan one, except as a last resort.<sup>1</sup> The appellate principle is strikingly absent, so far as the form of reference of disputes is concerned.

At the same time, it must be remembered that the average individual mine worker naturally looks upon the entire process of settling disputes as a series of appeals from the decisions of his employer or of his employer's representatives. He has been accustomed to look for compulsion from this employer, and at one time his only method of appeal from his employer's decision was the strike. The new method of "conciliation" is to him a means by which he can refer his employer's decision to some other authority. The extent to which the agreement is an actual contract between employer and employees is the measure of the correctness of his view.

*b.* Provision for methods of conciliation has naturally resulted in a large number of separate disputes and matters coming up for conciliation. While no statistics are available for the years prior to 1903, there is evidence that for a number of years prior to the general strikes of 1900 and 1902 labor disputes were few and far between and grievances were rarely aired.<sup>2</sup> Since the 1903 award

<sup>1</sup>The testimony of John Mitchell at the Washington, D. C., hearings of the U. S. Commission on Industrial Relations showed very clearly his opposition to the submission of differences to a third party. Mr. Mitchell was the mine workers' representative before the Anthracite Coal Strike Commission, whose awards laid the basis for the present plan.

<sup>2</sup>Assertions to this effect have been made by operators at various times. See Report of the Anthracite Coal-Strike Commission and proceedings of conferences.

went into effect, the number of complaints submitted to the Board of Conciliation, by years, has been as follows:

YEAR	NUMBER OF COMPLAINTS	YEAR	NUMBER OF COMPLAINTS
1903 . . . . .	107	1909 . . . . .	8
1904 . . . . .	16	1910 . . . . .	15
1905 . . . . .	16	1911 . . . . .	5
1906 . . . . .	8	1912 . . . . .	3
1907 . . . . .	7	1913 . . . . .	51
1908 . . . . .	9		

The large number of grievances coming up immediately after the award went into effect and the increases in 1910 and 1913 following amendments to the award are significant. Many of these cases were caused by the need for interpretation of the awards and the new agreements; others were due to the fact that outlets for grievances were provided, especially in the case of the 1903 award and the 1912 agreement.<sup>1</sup> But the foregoing statistics do not exhibit the actual number of grievances, since they do not include those which are settled without reaching the Board. Unfortunately no records are kept of grievances and disputes which are settled without reference to the Board or umpires, but it is asserted by members and officials of the Board that their number has greatly increased since 1912.

c. The foregoing considerations suggest a tendency toward stopping disputes near or at the point of impact. Aside from the creation of new local machinery by the 1912 agreement, and aside from the concomitant provision for reference to the two district members of the Conciliation Board before reference to the entire Board, the conciliation work of individual members of the Board before 1912 showed a considerable growth. An increasing proportion of grievances, it has been stated by members of the Board, never reach the Board, because they are settled either by the union member of the

<sup>1</sup> The mine grievance committee was characterized to the writer by labor leaders as a benefit to the worker, because local machinery was thereby afforded by which a worker could present a grievance and have it settled without going to the Conciliation Board, and by which the opportunity for the settlement of grievances was made greater than ever before. It is natural, therefore, that the opportunity should be taken advantage of.

Board or by the two members of the Board in a district. The provision of the 1912 agreement referred to above was, therefore, little more than a formal recognition of the work of these conciliators. It is a significant fact, perhaps, that the number of grievances settled by agreement, usually by members of the Board in the district in which the grievance originated, was much larger proportionately from 1909 to 1912 than from 1903 to 1906, as the following table shows:

DISPOSITION OF GRIEVANCES BROUGHT BEFORE THE ANTHRACITE BOARD OF CONCILIATION, 1903-1912

DISPOSITION OF GRIEVANCES	NUMBER BROUGHT UP IN		
	1903-1906	1906-1909	1909-1912
Complaints on which the Board took no action:			
Settled by agreement of both parties . .	14	3	9
Withdrawn by complainant . . . . .	53	7	9
Refused by Board . . . . .	5	. . . .	1
Complaints decided by the Board:			
Employees sustained . . . . .	31	7	2
Employers sustained . . . . .	19	2	5
Complaints going to umpire and decided:			
For employee . . . . .	6	3	*
For employer . . . . .	15	4	*
Total . . . . .	143	26	26*

\* About six in all were pending when the report of the Conciliation Board was published.

Thus 10 per cent of the grievances presented to the Board in 1903-1906 were disposed of by means of settlements by agreement of operators and mine workers immediately concerned, 12 per cent in 1906-1909, and over 28 per cent in 1909-1912.

d. The creation of machinery for the local conciliation of disputes has unquestionably aided the rapid growth of the union since 1912. Confidence in the ability of the organization to obtain the settlement of specific grievances arising at the collieries has resulted, and membership in the union has meant tangible benefits to the mine worker. This effect has been much greater under the 1912 agreement than under the preceding agreements, because of the provision for colliery grievance committees. The grievance committee is both an inducement to the mine worker to join the union in order to gain

the benefit of collective action on matters of local interest, and a weapon which the union organization uses to force him to join.

No provision was made as to the manner in which the grievance committees are to be selected. There is reason to believe that such a provision was purposely omitted, since it would involve more or less formal recognition of the union local. In practice the committees are chosen by the union local and have refused to take up grievances of nonunion workers; in fact, it has been asserted that this is the usual procedure, and that the mine committees are nothing more than an active auxiliary to the union campaign for membership and the "button strike" method of compelling nonunion mine workers to join the union. There seems to be no doubt that the mine grievance committee has had the effect of aiding the unusual increase in union membership since 1912. The practical recognition by the employers of local bodies representing the local unions was certainly a factor of great importance in stimulating the immigrant mine worker to join the union, because it enabled him to see with his own eyes a concrete piece of industrial machinery which stood ready to take up his grievance and if need be to carry it "higher up" for adjustment. It was natural, therefore, that he join the union in order to acquire a standing before the committee; if he did not join, he would face the opposition of the committee when he had a grievance to be aired.

e. The accusation that there has been more delay in the settlement of disputes than is necessary has been frequently made by mine workers. How far avoidable delay occurs is difficult to determine. Data relative to the length of time required to settle disputes under the agreements are incomplete for two reasons: (1) the date on which action was taken by the Conciliation Board in cases referred to it is usually not given in the reports; (2) no records are kept of the disputes which do not reach the Board. The report of the Conciliation Board for 1903-1906 gives a recapitulation which is complete, but this is not given in subsequent reports. Following are the data for 1903-1906 under the awards:<sup>1</sup>

HEARINGS OR ACTION TAKEN WITHIN		ACTION OF UMPIRE WITHIN	
One month . . . . .	44	Two months . . . . .	2
Two months . . . . .	69	Four months . . . . .	1
Over two months . . . . .	37	Seven months . . . . .	1

<sup>1</sup>Report of Board of Conciliation for Three Years Ending March 31, 1906, P. 335.

While no records exist of the grievances referred to mine committees under the 1912 agreement, it appears to be generally thought that disputes have been settled by the new plan of conciliation with less delay than formerly. Frequently the first step in conciliation, the effort to settle differences by direct conference between mine boss and complainants, is omitted and the grievances are first brought by the mine committees, and usually these grievances are promptly settled, unless they are referred, by a conference of committee and company officials. The 1912 provision permitting the union member of the Conciliation Board for the district to sit in these conferences aids in the prompt settlement of disputes, since the Board member knows pretty well what the prospects for a successful reference of a dispute to the Board are, and he advises the committee accordingly. His knowledge of precedents also serves to guide the settlement of local grievances. The conciliation work of the two members of the Board from the district in which a grievance originates serves to prevent delay by bringing about settlements without reference to the Board. More businesslike methods of procedure also have served to lessen the time required for final action on a grievance. The Board of Conciliation meets regularly twice a month. In 1914 ninety meetings were held for the disposition of grievances, besides frequent conferences between the two district members of the Board and between the individual members and the grievance committees and complainants.

Under the present methods it does not seem that there is unwarrantable delay in obtaining decisions on matters coming up for settlement. The members of the Board of Conciliation have other duties than those attached to their office. The cases coming up before the Board frequently require the taking of lengthy testimony, and the evidence must be carefully digested before a decision can be made. Many trivial cases consume the time at the Board's disposal. In some instances the decisions require more than one conference; the matters involved are often questions on which careful interpretations must be made or actual conciliation is needed. In fact, it appears to be true that most of the cases of apparent delay are not so much the fault of the Board of Conciliation as of the character of the cases themselves. Frequently where a grievance is brought up which is without sufficient basis it is not pressed. Either it is

postponed in order to secure further evidence or else it is not withdrawn and is allowed to stay on the "docket," because a member of the Board does not wish to confess to his constituents that he has not been able to secure favorable action; hence the Board is blamed for delaying action. The realization that less delay can be brought about only by additional conciliation machinery is clearly manifested in the mine workers' 1915 demands.

f. The attitude and the character of those who compose the Board of Conciliation and the local grievance committees are an important factor in the settlement of matters under the agreements. This is inevitably so, for several reasons, although the effect of the "personal equation" cannot be statistically stated. The members of a Board of Conciliation which meets regularly and frequently to pass on questions that often involve the same general principles learn to know each other personally and to understand in an intimate way the position, with reference to their constituencies, in which they are placed. The character of the grievances coming before the members of the Board, and even their disposition, depends a good deal on this personal element. In one district the members of the Board representing the employers and the union may understand each other better than in another district and work together with greater facility. In another district the union member of the Board may be inclined to be a union "politician" and to insist on points that will increase his prestige with his constituents. This will result in some friction and appears to hinder rather than help conciliation. A trivial case may be pushed more because of the publicity it happens to get than because of the importance of the principle involved. For example, a breaker boy was discharged by a company for some infraction of the rule. After eight days the boy found employment in a mill at better wages than he was getting on the breaker. A grievance was presented on the ground that the boy was unjustly discharged. The boy did not want to return to the breaker, because he was getting better wages than he had as a breaker boy, but the issue was made on payment of his wages for the eight days he was idle. The principle that a discharged worker ought to be paid for time lost if he lost it through no fault of his own had long been established, so that in this case the fundamental principle was not at stake, but his wages at a dollar a day. The attitude of the district

union member of the Board was such as to cause the grievance to be brought before the whole Board, where it was necessary to hear a large amount of testimony and to take up a half day's time of the Board. The question involved had its right or its wrong, of course, but the inability of the two members of the Board to adjust so small a matter was probably due to the desire of one of them to gain support for himself among his constituents. An employer member of the Board may likewise be so great a stickler for technicalities that friction may continually result. In another district the two members may work together well, rarely present a case for decision by the Board, and never do so unless it involves a new issue or a new interpretation of the agreement. The opinion has been expressed that the union member under such circumstances has been able to gain more concessions on account of his personality and his attitude than other union members of the Board.

While the personal element cannot be accurately measured, one cannot but be impressed with its importance in the actual work of the Board of Conciliation as a whole, and particularly in the work of its members. The longer the process of conciliation goes on, the greater seems to be the importance of the "personal equation," especially in the settlement of matters by local conciliation and by the district Board members. Even the origin of grievances is affected in this way. At some collieries are the aggressive individuals—the "trouble makers"—in the leadership of the local union, and at these collieries grievances occur with so much greater frequency that their real cause cannot be doubted. It has been said that if the local grievances could be charted on a map of the anthracite field, it would be seen that in certain sections, and particularly at certain collieries, the grievances would be concentrated, while other collieries—the majority—would receive no distinguishing mark. And while the natural tendency is for the personal element to be discounted by the Conciliation Board, its bearing on the general problem of industrial relations and their adjustments is great, even if indefinite.

g. The fact that the newer immigrant races compose so large a proportion of the anthracite mine workers is an element of great importance in the operation of the conciliation plan. The inexperience of this group of workers in collective bargaining, their ignorance of American points of view, of the real issues at stake, and of the



purposes and aims of unionism, and the characteristics peculiar to the various races represented have injected into the situation elements so complicating as to menace at times the success of the work of conciliation. In spite of what naturally appear to have been insuperable obstacles, however, it may be confidently said that the conciliation plan has been fairly successful in dealing with the immigrant and that the immigrant has gradually been educated in its aims and methods to a far greater degree than would be expected.

Roughly speaking, about 80 per cent of the United Mine Workers' organization in the anthracite field is composed of Polish, Italian, and Rumanian immigrants. This large proportion has been secured, so far as active organization by the union is concerned, by employing organizers of different nationalities; by printing the union constitution, by-laws, and rules of procedure, and the agreement, in the different languages; by allowing immigrants to hold important offices in the local unions and even in the district organizations; and by the enforced payment of dues through "button strikes" and the work of the grievance committees. Either the president or a vice president of nearly every local is of one of the nationalities of newer immigrants, and he is intrusted with the duty of translating the debates and rulings for the information of members who cannot understand English. It seems to be true that the newer immigrants are inclined to have a passive attitude toward the activities of the locals and the union organization, but as they become more Americanized they gradually take a more active part. Not only are they prominent among the officers of the local and district organizations but they are active members of grievance committees, constitute a large proportion of the delegates to the district and joint-district conventions, which determine the policies of the union in collective bargaining, and have been on the conference committees to meet the operators. That their increasing strength and influence in the union is regarded with apprehension by some of the natives and of the older group of immigrants is not disguised. At the same time, it is also recognized that the longer the experience the immigrant has, the more conservative he becomes and the more inclined he is to work with the element which has been in control of the policies of the union.

The position which the newer immigrant has attained has not been without difficulty, both on his part and on the part of the older and native element, or without perils to the cause of unionism. The emotionalism of the newer immigrant, his ignorance, his totally different point of view, and his frequent inability to see the larger issues at stake beyond trivial or merely personal grievances have been serious obstacles to conciliation. The tendency on the part of the newer immigrants to take quick group action on matters on which the individual would hesitate perhaps even longer than the older immigrant or the native, has been and is another difficulty. For example, newer immigrant individuals have been interviewed, when a grievance was pending, with regard to their attitude and their understanding of unionism and the trade agreement and have shown an understanding and appreciation that were unmistakable. On the very evening of the day they were interviewed they have been among the first to shout "Strike!" at a meeting of their local where the grievance was aired. Counterbalancing these characteristics and tendencies, however, is the willingness of the newer immigrant to be led by members of his own race who are in sympathy with conservative policies. Sometimes it is necessary to make an emotional appeal to him on the grounds of loyalty to the union; at other times calm reasoning will be sufficient, especially if he can be dealt with individually. Accustomed as he has been to a sort of feudal relationship to his landlord in the country of his birth, the basis of which was the opportunity to obtain assistance in times of distress, he now looks for guidance to the older immigrants of his own nationality. His unionism, while emotional, is at the same time personal. Without the influence of the leader of his own race an agreement would have little weight and conciliation would have small meaning; he would either become a rampant radical or he would be a serf. But under the influence of conservative leaders he is becoming educated in the point of view which is necessary to collective relations with the operators. Unionism in the anthracite field has become an effective factor in assimilation, breaking down racial solidarity, training the newer immigrant in conservative action, and bringing him in close touch with natives and older immigrants. This fact is strikingly apparent to anyone who has had the opportunity to observe the situation during the last few years.

The operators, while complaining that the mine workers themselves—especially the “foreign” element—have not been capable of collective action, particularly where they are allowed to act directly through colliery grievance committees, are appreciative of the difficulties of the union leaders in controlling the newer immigrants and have made concessions with the specific purpose of enabling this control to be more completely exercised. They are disposed to look upon the efforts of the union leaders as sincere, and at least some of them are willing to lessen and even to remove what has been an obstacle of their own making, the absence of formal and complete recognition. For if a closed shop could be authoritatively maintained, the control of the newer immigrant element would, it is claimed by union leaders, be very much more easily accomplished and collective relations would be more solidly established.

Thus, under the conditions which are found actually to exist, and with the forces at work, there is a tendency of an unmistakable kind. The longer the immigrant stays, the better educated he is in collective bargaining, the more amenable he is to American procedure, and the clearer is his conception of his responsibilities. He does not seem to have injected any permanent radicalism into unionism in the anthracite field. The I. W. W. movement never succeeded in gaining a foothold, for example. The immigrant mine worker seems to be assimilating the ideals and the philosophy of the unionism that he finds, rather than molding or changing them in any appreciable degree.

2. *The arbitration plan in practice.* The method of arbitration of disputes provided by the anthracite Strike Commission in its 1903 award was set forth as follows:

If, however, the said board [Board of Conciliation] is unable to decide any question submitted, or any point related thereto, that question or point shall be referred to an umpire, to be appointed, at request of said board, by one of the circuit judges of the third judicial circuit of the United States, whose decision shall be final and binding in the premises.

This method has remained without change under the subsequent agreements. The umpire is chosen for each case as it comes up, and the contingency of a deadlock in choosing an umpire is prevented by having his appointment in the hands of a federal judge in the anthracite section. In practice, however, both parties are consulted

and as a rule have been able to agree on the man to be named, and the choice has been so closely confined to three men—former United States Commissioners of Labor Carroll D. Wright and Charles P. Neill and former United States Circuit Judge George Gray, all of whom were connected in official capacities with the Strike Commission—that the principle of permanent umpires may be said to have been followed. The first two named were national officials while acting as umpires, except in the case of Dr. Neill, who was employed as umpire for several years after his resignation as Commissioner of Labor. Furthermore, all of them may be considered expert arbitrators, especially Dr. Neill, whose experience in this line has been extensive and varied.

A rather unusual situation occurred in 1904, when reference was made to Judge Gray, then of the United States Circuit Court, after Umpire Wright had given a decision. The question arose in 1903 whether deductions could be made from the wages of all of the miners at a colliery for the payment of checkweighman or check docking bosses when only a majority of the miners had petitioned for the installation of weighmen or bosses. The Board of Conciliation decided, in July, 1903, on a case presented to it, that checkweighmen or check docking bosses should be installed when a majority of the miners petitioned, but that collections for paying their salaries or wages could be made only from those miners who consented. In October, 1903, the question came up again to the Board in another grievance case in which it was claimed that certain operators had refused to collect a certain sum from each miner for the payment of weighmen or docking bosses. The Board divided on this occasion, and the question went to an umpire. Umpire Wright did not sustain the grievance as it was presented; he made rulings that sustained the contentions of the complainants. The operators' representatives on the Board, however, claimed that the umpire had no authority to reverse a decision of the Board. As a way out of the difficulty, the interests represented on the Board agreed to submit the interpretation of the award to Judge **Gray**, agreeing to abide by his decision, whether it meant discharging the umpire's rulings or rescinding their own decision of July, 1903. Judge Gray, after a lengthy review of the case in all of its aspects, interpreted the award in the same way as Umpire Wright.

The distinctly arbitrativ nature of this reference is seen, first, in the fact that the representatives of mine workers and of operators had clashed and deadlocked, and, second, in their agreement to abide by the opinion of Judge Gray even if his opinion should be contrary to the umpire's decision. In other words, the situation was a peculiarly critical one. While the technicality of the authority of an umpire to reverse a decision of the Board was introduced, the real question was fundamentally similar to that of the check-off. The creation of a miners' fund by deducting a specified sum fixed by a majority of the miners and the precedent of deducting it from all the employees' wages at the demand of those employees who were members of the union locals were looked upon as constituting a dangerous precedent. It was an instance where the plan of conciliation and arbitration broke down and where it was necessary to create new, although temporary, machinery to bring about a settlement.

This was, however, the only instance of its kind.

3. *Cessations.* The number of cessations of work cannot be exactly determined prior to 1913, nor can cessations be distinguished from suspensions incident to the making of agreements in those years in which agreements were made. In other years, however, the number of cessations was inconsiderable except for 1913. The statistics in the table below show the number of men on strike, the days lost from work, and the average days lost per striker in the years in which agreements were not made. In cases where "None" appears,

YEAR	NUMBER OF MEN ON STRIKE	TOTAL DAYS LOST FROM WORK	AVERAGE NUMBER OF DAYS LOST PER MAN ON STRIKE
1901 . . . . .	None	None	None
1903 . . . . .	None	None	None
1904 . . . . .	2,228	34,103	15
1905 . . . . .	4,998	33,986	7
1906 . . . . .	None	None	None
1908 . . . . .	None	None	None
1910 . . . . .	2,853	15,739	6
1911 . . . . .	5,900	36,958	6
1913 . . . . .	64,086	481,678	8
1914 . . . . .	26,115	179,743	7

either there were no cessations at all, or the number was so slight that it was not included in the tabulations of the United States Geological Survey.

From the above it will be seen that the cessations from 1901 to 1911, inclusive, were inconsiderable. They were in the form of local colliery strikes of short duration and were caused by local disputes over local questions, according to statements of union officials and the mine operators. The United States Geological Survey reports no cessations at all in 1901, occasional cessations of short duration and having little effect on coal production in 1903, and only five small strikes in 1904.

In 1910, the year after the 1909 agreement for three years had been consummated, there were stated to be a few cases of temporary shutdowns because of labor difficulties. Only one instance occurred in which the idleness extended over twelve days, most of the troubles lasting from one day to one week. Some idea of their causes may be gleaned from the complaints made by operators to the Conciliation Board and the employees' answers. Only six of these complaints were made from 1903 to 1912 and in four of them the causes are shown as follows:

May, 1903—Demand of men that pay days be unchanged.

July, 1903—Demand of men for increased pay, the issue being an interpretation of the 1903 award.

August, 1904—Demand of men to test coal scales at mine.

February, 1907—Refusal of men to clean coal.

The cessations in these instances lasted a few days, with the exception of the second one named, which lasted four months and involved 60 men.

Under the 1912 agreement the cessations have been more numerous than under the award or the previous agreements. According to the report of the Bureau of Anthracite Coal Statistics<sup>1</sup> the suspension pending the making of a new agreement, which lasted from April 1 to May 20, 1912, accounted for all of the idle days caused by strikes; hence it must be assumed that no cessations of work occurred. In

<sup>1</sup> This Bureau furnished the data on the anthracite coal field to the United States Geological Survey, from which the foregoing statement is taken (*Production of Coal in 1912*, p. 42).

1913, however, 64,086 men were on strike, losing 481,678 workdays, or an average of 8 days per striker. There were strikes at ninety-three different mines during the year. In 1914 the number of strikes was smaller, less than one third as many men were involved, and the average duration of the strikes was less. In 1915 the colliery strikes have, according to unofficial data, shown a considerable increase. While the United States Geological Survey does not class these strikes as "serious interruptions" from the standpoint of production,<sup>1</sup> they were regarded as extremely annoying by many of the operators and as evidence of inefficiency in the new conciliation machinery introduced by the 1912 agreement. They were of two kinds, petty-grievance strikes and "button strikes."

a. Petty-grievance strikes appear to be due to one of two causes when conditions at a colliery bring about dissatisfaction. The local union may be influenced by a radical or emotional leader to strike without employing the conciliation machinery provided by the agreement. The local union itself may be controlled by an excitable element and force its leader to agree to a strike. The former cause is believed by the operators to be the most frequent cause of petty strikes of this character, while labor leaders ascribe them chiefly to the presence of immigrant workers. There seems to be ground for the validity of both explanations. In the one case, the frequency of grievance strikes at certain collieries where, it is claimed, leaders of the types referred to are known to be would tend to substantiate the operators' view. In the other case, observation of actual meetings of mine locals shows that the immigrant workers are responsible; the introduction of conciliation methods among a population composed of peoples whose racial characteristics are so different from the older immigrants and nations may be expected to have unusual results. On the other hand, the tractability of the newer immigrant when he is approached by those who understand him is a well-known characteristic, and observation of actual instances has shown that the intelligent labor leader has been able to prevent many local

<sup>1</sup>"In consequence of the miners and operators again extending the terms of the awards, this time for a period of four years, there were no serious interruptions to coal-mining operations by labor troubles in 1913" (Production of Coal in 1913, p. 883).

strikes because he has known how to deal with the new immigrant unionist.<sup>1</sup>

b. "Button strikes" are not caused by dissatisfaction with working conditions, but are a method of obtaining a closed shop at a colliery. Buttons are issued each month by the union to members as receipts for payment of their monthly dues. In order to enforce the payment of membership dues by all workers at a colliery, a strike of the button-wearers is sometimes inaugurated to force the non-union workers to join. Naturally these "button strikes," as they are called, occur most frequently during membership campaigns by the United Mine Workers. In 1913, when an effort to recruit the union strength was being made, they were numerous and occasioned vigorous protests from the operators. In 1915, during a campaign for members preliminary to the 1916 negotiations, they were again quite numerous. While button strikes are technically violations of the agreement, and the Board of Conciliation unanimously passed a resolution condemning them as violations, the opinion has been expressed by labor leaders that if the operators had conceded the check-off, the closed shop, and full recognition, the union would be in the position of supplying labor according to contract instead of fighting for its existence at every colliery.

Button strikes occur, as suggested above, spasmodically. In 1914 they practically disappeared for three reasons: (1) in some cases collieries were completely unionized and the custom of belonging to the union apparently established; (2) in other cases a revulsion of feeling took place among the workers and they were no longer willing

<sup>1</sup>The prevalence of petty-grievance strikes was a subject of comment in the report of President John T. Dempsey, of the U. M. W. District No. 1, to the annual convention in July, 1913. He said: "I regret that it is necessary for me to call your attention to the fact that during the past year violations of the laws of the organization and the terms of the agreement have been quite frequent. Numerous petty strikes for trivial causes have taken place and have been the cause of much resentment and bitterness on the part of the operators. I am of the belief that these practices cannot result in any permanent good for our organization or its membership. Therefore I strongly recommend that this convention place itself squarely on record for the faithful observance of our laws and contracts."

The report of the convention's committees on officers strongly seconded this advice, but the debate showed that some of the local union leaders believed that they had grounds for this participation in mine strikes. The report was adopted, but not unanimously.



to lose two or three days' pay in order to force a recalcitrant worker to join; (3) in still other cases the use of the lockout by operators as a means of punishment was effective. One company, for example, adopted the policy of closing down a colliery, where a button or grievance strike had started, for two or three weeks. This method of discipline, it is claimed, caused the workers to "think twice" before striking again and to blame the instigators of the strike for their loss of wages.

### III. SETTLEMENTS OF DISPUTES AND GRIEVANCES

The nature of the questions coming up for settlement under the 1903 award and the subsequent agreements has largely determined whether the settlements themselves are purely interpretative of the award and the agreements or are amendatory of them.<sup>1</sup>

1. The great majority of the settlements have been interpretative. The specific questions involved which may be classed as necessitating interpretative settlements have been as follows:

*a.* Questions of wages, such as advances allowed by award and agreements, reduction in wages (that is, below the rates allowed), back pay, and interpretation of sliding scale. Some of the other issues indirectly required interpretation of the award and agreements, such as those involving rates for yardage, cars, size of cars, and topping, since the differentials and all rates of pay were permitted by the award and the agreement to remain on the same system as prevailed in April, 1902, the new provisions allowing only horizontal percentage increases. Fully half of the matters relating to wages were thus clearly interpretative.

*b.* Check docking bosses and checkweighmen.

*c.* Hours.

*d.* Discrimination against employees because of union affiliations, so far as it could be determined according to the definition of discrimination given by the award and the agreements.

<sup>1</sup> Since no records are kept of grievances or disputes unless they are brought before the Board of Conciliation, the data relating to these matters are confined to the records of the Board, four volumes of which have been published, covering the period 1903-1913. It is believed that the matters coming up for settlement by the Board are fairly representative of the general character of all of

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## e. Strikes of employees.

Such matters as the price of powder and the rates or prices of coal paid by employees for their domestic use involved a settlement of the question of whether or not they could be considered as among those conditions existing in April, 1902, which were to remain unchanged.

the grievances and disputes. The following table presents a recapitulation of the matters coming before the Board for the ten years 1903-1913:

GRIEVANCES BEFORE ANTHRACITE CONCILIATION BOARD, 1903-1913

NATURE OF GRIEVANCE	SETTLED BY AGREE- MENT	WITH- DRAWN*	EM- PLOYEES SUS- TAINED	EM- PLOYER SUS- TAINED	REFUSED BY BOARD†	UMPIRE'S DECISION		TOTAL‡
						For Em- ployee	For Em- ployer	
Wages . . . . .	22	33	20	15	4	10	19	123
Rates for coal . . . . .				2				2
Check docking boss and checkweigh- man . . . . .		1	2	2			1	6
Hours . . . . .	1	6	3				1	11
Discrimination against employees	6	27	19	8	2	4	1	67
Size of car . . . . .	1	1	1				1	4
Price of powder . . . . .							1	1
Strike of employees	1	6		5				12
Condition of em- ployment . . . . .	1	7				2	2	12
Collection of union dues . . . . .			5					5
Miscellaneous . . . . .		6	2				1	9
Totals . . . . .	32	87	52	32	6	16	27	252

\* Cases marked "withdrawn" in the foregoing table were for various reasons, the large majority being when the reply of the operators to the miners' complaints plainly showed that there was no ground for complaint. Others were because of compromise by parties to grievance, failure of interested parties to appear before the Board to prosecute the cases, and complainants' quitting the employ of the company. Except for 1903-1906, the records do not show the cause of withdrawal except in a general recapitulation (Report of Board of Conciliation, 1903-1906, p. 335).

† Because complaints were out of the Board's jurisdiction.

‡ Definite complaints to the number of 254 were made in the period 1903-1913, the division according to periods being as follows:

PERIOD	NUMBER OF COMPLAINTS
1903-1906 . . . . .	143
1906-1909 . . . . .	26
1909-1912 . . . . .	26
1912-1913 . . . . .	59

Generally speaking, the award and the subsequent agreements may be said to have been fairly definite in their provisions. The largest number of grievances brought before the Board in 1903-1912 related to wages and discrimination on account of union affiliation, 145 out of the total of 195 being of these two classes. The award and the agreements definitely fixed the differentials existing in 1902 as the basis; the questions coming up, therefore, related (1) to the differentials and other conditions in existence before the award was made, and (2) to the method and the extent of the application of the terms of the award.

2. Matters coming up for settlement which could not be disposed of by strict interpretation of the award or of the agreements. Only four instances of this kind, apparently, have occurred, but they are important because they occasioned or paved the way for amendments to agreements. They may be stated briefly as follows:

*a.* The supplementing of the 1909 agreement by a resolution of the Board of Conciliation which provided for a series of references of grievances to be followed before they could be brought before the Board itself. This was a legislative act on the part of the Board which had not been specifically provided either in the awards or in the agreement, but which was regarded as necessary to carry out the spirit of the agreement.

*b.* Several grievances alleging discrimination by employers against employees on account of union affiliation. These involved a single point, and they were made the subject of special rulings which became provisions of a later agreement.

*c.* A case involving the wages of laborers employed by contract miners. This case was of special importance because a large number of workers were concerned, and may be reviewed in more detail.

The case first came up in May, 1903, in a grievance from certain laborers employed by contract miners for a certain company,<sup>1</sup> the laborers requesting that the advance of 10 per cent in wages granted by the Coal Strike Commission should be given to them as well as to contract miners. The Board of Conciliation upheld the miners in their contention, but in doing so it distinctly went beyond the provisions of the award. The award of the Commission was "that an

<sup>1</sup> Grievance No. 9: Coxie Brothers & Co.

increase of 10 per cent over and above the rate paid in the month of April, 1902, be paid to all contract miners for cutting coal, yardage, and other work for which standard rates or allowances existed at that mine, from and after November 1, 1902," etc. No mention of the employees of contract miners was made in connection with increase in wages. The petition of the laborers to the Board of Conciliation in this case asked that the Board "find that it was the intention of the Anthracite Coal Strike Commission to include the class of mine labor represented" by the petitioners. The action of the Board was couched in terms that made it appear interpretative rather than amendatory of the award. "Taking effect August 1, 1903," said the formal action of the Board, "it is resolved by the Board of Conciliation, in its interpretation of the award of the Anthracite Coal Strike Commission, that contract miners' laborers are entitled to partake in the benefits of the wage provisions of the award." The fact that contract miners' laborers were not regarded by the Commission as employees of the operators was recognized in a decision of Umpire Carroll D. Wright in a later case (Grievance No. 62, September 4, 1903), in which he said, "In regard to the miners' laborers, the Commission left it entirely to the miners to do justice to them. This was because the miners' laborers are not employees of the operators, but of the miners themselves." Furthermore, the award of the Commission was quite specific in providing that the 10 per cent increase was to be paid "from and after November 1, 1902." The Board's ruling in regard to miners' laborers, however, was effective only from and after August 1, 1903.

This view of the Board's action was taken by Umpire Charles P. Neill in a decision on August 26, 1914 (Grievance No. 245, Item 1), interpreting a provision of the 1912 agreement relating to the "standard rate" to be paid by contract miners to their employees.<sup>1</sup> In reviewing former decisions and actions relating to contract

<sup>1</sup>The decision in this case was of unusual importance because it involved the contract system of one of the large mining companies (the Delaware and Hudson Coal Company). This company, instead of having a contract with each individual contract miner covering the work of such individual worker, made a contract with a single miner covering the mining of all the coal in a given section of a mine and requiring the work of a number of miners as well as laborers. The decision, which was based in part on former decisions and rulings, directed the payment of standard rates to miners and laborers employed by contract miners and involved the payment of large sums of money.

miners' employees Dr. Neill said of the ruling made by the Board in May, 1903 :

The Board of Conciliation had in its membership three official representatives of the miners when acting in a collective capacity. In acting on this grievance, therefore, the Board, with the concurrence of the body of contract miners as represented by their officials on the Board, may be regarded as making an agreement *supplementary* to the award of the Commission, and thus doing justice to the laborers of the miners as it had been left to the miners to do by the Commission, according to the opinion of Umpire Wright. On no other hypothesis can the umpire understand the action of the Board in making its ruling effective August 1, 1903.<sup>1</sup>

Since both Umpire Wright and Umpire Neill were connected with the Coal Strike Commission in official capacities, their views may be considered authoritative. Particularly significant is Dr. Neill's point that the members of the equipartisan Board of Conciliation had the power to bargain collectively.

d. Rates of pay. While the Board of Conciliation and the umpires have been called upon on a number of occasions to decide what rates should be paid in new operations, their decisions have always, so far as it has been possible, applied the differentials existing in collieries where similar work had been done in the past. In other words, they have merely interpreted the award's provision that "present methods of payment for coal mined shall be adhered to, unless changed by mutual agreement" and the 1909 agreement's provision that "the rates which shall be paid for new work shall not be less than the rates paid under the Strike Commission's award for old work of a similar kind and nature."

There have been a few instances, however, where the award and the agreements have not been found applicable and interpretations have not been adequate. One of these cases was of ten years' standing and involved a condition not covered by existing differentials. In the Klondike vein at the Ontario Colliery of the Scranton Coal Company it was necessary to take down top rock to make the requisite height for mine cars. The rate paid for this work was \$2.20 a yard. But this vein and another vein lying above it came together and formed one vein of a considerably greater thickness, with a strip

<sup>1</sup> Board of Conciliation, Decision of Umpire *in re* Grievance No. 245, Item 1.

of rock running through the middle of the vein. Where the two veins merged there remained no necessity for taking down top rock where the full height was mined, but it then became necessary to handle the strip of rock between the two veins. The company put on a new rate, and the miners presented a grievance. This grievance was first presented in October, 1904.<sup>1</sup> The company claimed that it had the right, under the award, to readjust the rates of compensation whenever there is a change in the conditions under which the miner is working. The Board of Conciliation disagreed and the case went to an umpire. The umpire held that the case was one to which the award of the Commission was not applicable and the grievance was not sustained. But the umpire's decision also stated that "the question of what rate should be paid for the handling of the rock imbedded in the coal vein was a proper subject *for a new agreement*."<sup>2</sup> The matter did not come up again until 1912, when a grievance was presented by certain employees in the Ontario Colliery that since 1904 there has been no fixed and agreed-upon rate for cutting the rock under question. Again the case went to an umpire—it happened that it was the same umpire, Dr. Neill—and the decision was the same so far as the award and the agreement were concerned. But instead of merely suggesting that the question was a subject for a new agreement, the second decision specifically provided "that as the first step towards a settlement of this grievance, the proper representatives of the Company shall meet with the miners working in the chambers to which this grievance applies, or with a committee selected by these miners, and endeavor in good faith to agree upon some fixed and definite rate or rates to be paid for handling this rock. This first step is directed in conformity with the fourth award of the Anthracite Coal Strike Commission, which clearly implies that adjustments of grievances shall first be undertaken 'by consultation between the superintendent or manager of the mine or mines and the miner or miners directly interested.' If no agreement can be reached as a result of this first step, then in conformity with subsection (d) of the agreement of May, 1912, the representative of the Company shall meet with the Grievance Committee and the member of the Board of Conciliation and endeavor to

<sup>1</sup> Report of Board of Conciliation, Grievance No. 128.

<sup>2</sup> *Ibid.* Grievance No. 214, Item 3.

agree upon a rate or rates. In the event of a failure to agree, the fixing of the rate shall be referred to the Conciliation Board; and when a rate shall be finally agreed upon, it shall be retroactive to a date ten days after the date on which this decision is presented to the meeting of the Conciliation Board. It is to be understood that this decision applies only to the handling of what can be properly called 'rock,' and that the rates are to be fixed for this only."<sup>1</sup>

A second case involved the payment of a large sum of money by the anthracite operators. It was of unusual importance because it involved the application of the sliding scale for March, 1912, the last month of the existence of that method of payment, and hence did not constitute a specific precedent. Apparently such a case involved merely an interpretation of the 1903 award; in reality it went beyond the award, because it had been found, in applying the sliding scale, that the strict letter of the award could not be carried out. The award provided that each employer should apply the increase in pay on the earnings of the particular month on the sales of which the sliding scale was calculated; the practice, however, was adopted of paying the sliding-scale increase by applying the percentage based on the sales of a given month on the earnings of the succeeding month until April 1, 1912, when a suspension occurred. After work was resumed the mine workers claimed that the increase, according to the sliding scale, for the month of March was still due them. Various questions arose as to the method by which this increase ought to be paid. The umpire, however, decided that the workers were entitled to receive the sliding-scale increase as calculated upon the basis of March coal prices.<sup>2</sup> It will be noted, therefore, that this case was one which had to be decided as a case in equity. The Board of Conciliation failed to arrive at any agreement, and the umpire was called upon to act as arbitrator.

Within the last year or so the introduction of a coal-cutting machine has caused the bringing up of a question of rates of pay which apparently has no precedent or basis in preceding rulings and decisions. The question, in the form of a request for rates of pay higher than those set by operators who have installed the machine,

<sup>1</sup> Report of Board of Conciliation, Grievance No. 214, Item 3.

<sup>2</sup> Board of Conciliation, Decision of Umpire *in re* Sliding Scale for March, 1912 (rendered May 1, 1913).

has gone to the Board. The Board, in December, 1914, failed to agree on a decision and the matter went to Umpire George Gray. In this case the conciliation and arbitration machinery provided by the agreement has thus been called upon to act on a fundamental question which is not covered by the award or the subsequent agreements. It is significant that the 1915 demands of the tri-district convention of the United Mine Workers include one for "a readjustment of the machine-mining scale."

The 1915 demands, as has already been suggested, reflect the situation which has been created by the occurrence of such matters as these. Two distinct clauses in these demands indicate a desire on the part of the mine workers to change the conciliation machinery to meet the situation. They are as follows:

9. We demand a readjustment of the machine-mining scale to the extent that equitable rates and conditions shall obtain as a basis for this system.

10. We demand that arrangements of detailed wage scales and the settlement of internal questions, both as regards prices and conditions, be referred to the representatives of the operators and miners of each district to be adjusted on an equitable basis.

The trend is thus toward clothing the system of conciliation and arbitration with more definite and greater authority to settle fundamental questions of wages and conditions of labor. For over twelve years these questions have been regarded as settled by the 1903 award, except where situations have arisen which forced interpretations that were essentially supplementary agreements. It is now proposed to get farther away from the 1903 award as the constitution of industrial relations, to make the agreement the real constitution; and to transform the conciliation machinery into a more responsible and more responsive legislative body.

EDGAR SYDENSTRICKER

WASHINGTON, D. C.



## XXXIV

### EQUALIZING COMPETITIVE CONDITIONS<sup>1</sup>

WITHOUT going too much into details of the organizations known as the Illinois Coal Operators' Association, on the one hand, and District Number 12 of the United Mine Workers of America, on the other, it must be understood that the basis of the agreement between them is that of a protected competitive existence for all. The rates of mining are so fixed that the coal operators can do business. That is the first and basic proposition. Naturally the rank and file of the miners expected a scale which would enable them to earn a practically uniform wage throughout the state. The leaders, however, contended that the first object of the scale was to permit every mine to run and get into the market, and that all other questions must be subservient to this. The first clause of the joint declaration of principles says: "This joint movement is founded and is to rest upon correct business ideas, competitive equality, and well-recognized principles of justice." This involves a consideration of railroad rates to market points, conditions of the coal mined, etc.

The effect of the strike of 1897, which was successful not only in Illinois but throughout the competitive bituminous field, was to bring into prime importance the interstate conferences and agreements. In the interstate convention the operators of Illinois, Indiana, Ohio, and western Pennsylvania are represented, and the rates of mining and the conditions are fixed in that convention for all points on a competitive basis; that is, so that each operator shall have a chance to mine coal and get it to his market. For Illinois the convention fixes only the price at Danville, Illinois, which is thereby made the basing point for the state. The Illinois Coal Operators' Association and the representatives of the mine workers of Illinois then meet in joint convention and adjust the rates throughout the state in accordance with the Danville rate.

<sup>1</sup>From Eleventh Special Report, U. S. Commissioner of Labor, 1904, pp. 390-394.

At the interstate convention which followed the strike of 1897 the Illinois miners demanded a mine-run basis for Illinois and threatened to renew the strike if this was not conceded. That convention then fixed the mining price at 37 cents a ton for hand mining, run-of-mine coal, with a differential of 10 cents a ton run-of-mine for machine mining. That is, the companies were to pay 27 cents a ton for machine-mined coal in the Danville district and 37 cents a ton for hand-mined coal, the other rates in Illinois to be fixed competitively upon this basis. The Illinois joint conference of employers and miners met in Chicago in 1897 and adjusted the rates throughout the state.

The Illinois Coal Report for 1897 shows the effects of the equalizing principle on different sections of the state. In the northern, or thin-vein fields, the prices per gross ton were advanced 14 to 20 per cent, while in the southern, or thick-vein fields, the advance was 20 to 55 per cent. The prices in the northern fields had been near 50 cents per ton and in the southern fields 20 to 25 cents per ton. At these rates the miners in the southern fields had earned as high wages as those in the northern fields, but the advances following the strike placed the two sections nearer an equality in the cost of mining, but enabled miners in the southern fields, without restrictions on their output, to earn much higher wages than miners in the northern fields.

Perhaps the best statement of the principle underlying the Illinois agreement was made by Mr. Moorshead, a southern Illinois operator, who has had to surrender as much of the natural advantages of his position as anyone, in his reply to the miners of the Pekin mine who wanted increased compensation for the increased amount of dead work in that district. This was in the joint convention of 1902, held in Peoria, and his words throw a flood of light upon this subject of the basis of agreement:

. . . Go into the northern field and the miners must suffer very much there as compared with the miner in the thick seam. When you get into the thick part of the No. 6 seam the operator suffers. You penalize him in his good conditions that he may not drive the more unfortunate operator with his thin seam out of the market. . . .

We have banded together here so that the operators in every district might exist, notwithstanding the different conditions that prevail; and so long as we work on these lines some miners will have

to accept less wages than others. So long as we work on competitive lines some operators will have to receive less compensation than they are really entitled to. . . .

Mr. John Mitchell, replying for the miners, said:

I quite agree with Mr. Moorshead that in determining the rate you have to take into consideration the competitive conditions. I think he will agree with me, however, that there are considerations that enter even into that. Where conditions are abnormal in a vein, that has always been a consideration in determining the scale of wages.

In the convention of 1900, held in Springfield, a miner proposed that an extra rate be put on for mining in wet mines. "When men must work," he said, "in water up to their knees all day long and every day in the month, it is expected that they will be compensated for it; where men have perfectly dry work we are satisfied with the scale." It was agreed that no operator ought to permit his mines to run in that condition and that miners ought to have more wages under such conditions, and that to put an extra mining rate on wet mines might force the merely careless operator to improve his mines, but "it is a question whether you would not bring those parties into such a condition that they could not compete with their neighbors. They are in the same markets," and so the matter was dropped.

The machine question, also, divides and weakens the operators in their resistance to the union. There are 915 mines in the state, but only 332 of these are "commercial" or "shipping" mines, producing 96 per cent of all the coal and employing 93 per cent of the mine workers. Of these shipping mines only 64 used coal-cutting machines exclusively or in part in 1902. These mines are concentrated in the hands of some 30 companies. Against these 30 companies are 300 companies not using machinery, because the nature of their coal seams does not make it practicable. The question is mainly one of the thickness of the seams and the nature of the roof. Coal measures in Illinois range from one foot to nine feet in thickness. The thin veins are in the northern sections and the thick veins, for the most part, in the central and southern sections.

The distribution of machines reveals the significance of the statement made by the general manager of a company operating extensively in the southern fields:

The operators were whipped to a standstill. Impoverished by our insane price-cutting and the long period of hard times, threatened with a total loss of all our markets on the very eve of returning good times, we simply had to take our medicine. We were compelled not only to submit to any terms the miners' union saw fit to impose, but to join the Illinois Coal Operators' Association, where we are out-voted and made to seem to be unanimously opposed to ourselves. . . . Oh, yes, it is a voluntary association, of course, and votes as a unit in conferences, of course. . . . Well, I will say only this: We were whipped into this voluntary happiness by the strike of 1897, and we don't dare to get out of it.

And the same natural advantages of the southern fields for the use of the machines add force to the vigorous opinion of a miner whose relations with the union he desired not to have mentioned. How far his opinion is shared by other miners in the state there is no means of knowing. He said:

Of course you can get more coal from an undercut in an eight-foot seam than you can in a five- or six-foot seam. The thick-vein fellows were whipped into the competition agreement by a strike. Some of them thought to best the game on the sly by virtue of natural advantages, and are mad because they have met with obstructions and are forced to give the other properties a chance. Did you ever think that God Almighty restricts the output of sunshine 50 per cent to give the moon a chance? If you will promise to report exactly what I say I will say that we are willing to submit our case to the people of the United States and to admit that some of the thick-vein companies do not get all the coal it would be possible to take out of their mines at all times. The state officials, and the local unions, as such, have nothing to do with this. The coal just don't come up. But the question is this: Shall 20 or 30 mines, owned by four or five companies, employing 6000 men, be permitted, because of natural advantages they did not create—shall they be permitted to close down 890 other mines, owned by 275 other firms, and employing 39,000 other men? I for one am willing to go before the people of Illinois with this proposition: If we must restrict the output of a score of eight-foot mines in order to increase by millions of tons the output of Illinois coal mines as a whole, are we not justified from every point of view except that of the three or four companies owning eight-foot mines in doing so?

This much is stated in order that the machine question in the Illinois coal fields may be readily understood. It must be added that the "pick" operators—that is, operators of mines without machines

—stoutly contend that they do not sympathize with any policy of handicapping the machines, but it will also appear that the mine workers in their joint conferences take advantage of the division of the operators on this point. The whole question, it will readily be seen, is a detail of the large policy of equalizing competitive conditions.

In Illinois the machine differential was made 7 cents for the entire state as a result of the strike of 1897. In 1898 the national president of the interstate convention granted the Danville district a 10-cent differential. The Illinois officials claim that 7 cents is the average differential found to prevail under nonunion conditions in Illinois, taking the coal seams in which the machine had been able to hold its own under nonunion or open conditions. They claim that not only is this the average difference in cost the operators were able to establish but also that it is sufficient to justify the introduction of machines where machines are practicable, and that, furthermore, it is all the machines are worth to the mines.

A general statement of differentials for the competitive field is here subjoined, based upon the prices paid in each locality in 1902–1903. Changes in rates since agreed upon have been made upon practically the same ratio throughout the field.

MINING RATES SHOWING MACHINE DIFFERENTIALS ACCORDING TO THE INTERSTATE AGREEMENT FOR THE YEAR BEGINNING APRIL 1, 1902  
(Ton = 2000 pounds)

	HAND (PICK) MINING		CHAIN-MACHINE MINING		PICK- (OR PUNCH-) MACHINE MINING	
	<i>Rate</i>		<i>Rate</i>		<i>Rate</i>	
	Lump	Mine Run	Lump	Mine Run	Lump	Mine Run
Pennsylvania . .	\$0.8000 <sup>1</sup>	\$0.5171	\$0.5300	\$0.3426	\$0.5768	\$0.3716
(Pittsburgh district) . . .	.6680 <sup>2</sup>	.4318	.4420	.2856	.4780	.3089
Ohio (Hocking Valley) . . .	.8000	.5714	.5300	.3786	.5750	.4107
Indiana . . . .	.8000	.4900	.5850	.3650	.6200	.3900
Illinois . . . .						
(Danville district) . . . .		.4900		.3900		.3900

<sup>1</sup> Thin vein.

<sup>2</sup> Thick vein.

In opening the "interstate convention and sixth annual joint conference of coal miners and operators of Illinois, Indiana, Ohio, and Pennsylvania" for 1903, Mr. John Mitchell, as president of the United Mine Workers of America, said:

Last year the attention of the operators was called to the inequalities that exist in our interstate agreement. I can do no more than repeat in substance what I said on this subject last year. We believe the time is here when there should be an adjustment of our machine-mining scale. Our movement cannot live with any degree of satisfaction if we are going to have three or four different prices for mining coal by machinery. The introduction of mining machinery and the prices paid for mining coal by machinery must be so adjusted that labor will enjoy a share of the benefits and profits that come from the introduction of improved methods. . . . We believe also that there should be a fixed and flat differential for machine coal. We believe that the experience of the operators and miners in Illinois is such as to justify us in asking that that differential be fixed at 7 cents a ton.

The constant endeavor of the union has been to bring all the states to an equivalent of the 7-cent differential.

As heretofore shown, the mining machines are used almost exclusively in the southern districts of the state, where the veins are thick and adapted to the use of machines. Operators in these districts complain not only of the differential but also of definite restrictions on the output of the machines. These complaints take the form of charging the union with limiting the number of loaders after the machine and with preventing the machine-runner from cutting more coal than the loaders can handle by setting a limit on the number of runs and by equalizing the turns. These grievances are stated at length in an interview by the general manager of a company operating several mines in the southern fields of Illinois and in other states in which punching machines are used. He says:

To go into details, and taking the Mount Olive shaft, where a Harrison (pick) machine is used, the crew consists of one runner, one helper, seven loaders—number fixed by unions. They work ostensibly eight hours, but seldom or never actually that number. The rate is 42 cents per ton, or 7 cents less than hand-mine rates. This 42 cents is divided as follows: machine-runner, 5.5 cents; helper, 5 cents; loaders, 31.5 cents. This division of the mining rates, 42 cents, between the machine men and the loaders is attended to by

them, the company having no voice in the matter in such division, with the result that the machine-runners get the worst of it, and the loaders, being in the majority, outvote them in the unions, thus placing what amounts to a handicap upon securing men to run the machine. The loaders load nine tons per day at this shaft, and this limits the machine—since the runner has no incentive to cut more than will be loaded—to sixty-three tons per day (nine men to the crew, output sixty-three tons, gives an average of seven tons per day per man). These restrictions prevent the employment of speedy workmen, or at least of workmen for their speed, and hold down the speed of speedy men to afford employment for as many men as possible. These restrictions are enforced by fines, or more commonly by the union laying the men off as a punishment. The fine usually amounts to the excess earnings. . . .

Mr. Reynolds, afterwards the state president of the Illinois Mine Workers' Union, as spokesman for the miners, replied to the charges of restriction as follows :

Mr. Chairman and gentlemen, in answer to the charges preferred against the Illinois miners by the Illinois operators, I wish to say that in the first place they are charged with restricting the output of the mines of Illinois, first, by neglecting their work ; second, by adopting a system of so many cars a day ; third, by adopting the rule of so many miners after a machine in the machine mines of Illinois. Now, friends, referring to the first charge. . . . When that complaint was made against the Illinois miners two years ago, in order to protect the operators, we inserted a clause in our state agreement which gives the operators the right to discharge any member of our organization who lays out two days in succession, unless his absence from the mine is caused from sickness or he gets permission from the mine manager. I believe the operators have taken advantage of that clause.

Second, I wish to say in regard to restricting the number of cars each man should load in the mine, that possibly in a few mines in the state of Illinois that may be a practice, but I propose to explain to you the reason why. Under our state agreement the burden of giving to each and every miner an equal turn of the mine rests upon the shoulders of the operators. In some mines they have appealed to them time and again in order to secure what they were entitled to under the agreement, and as a last resort in those mines they were forced to place a restriction in order to get an equal turn of the mine. Before that they were always careful to figure the output of the mine and then divide it between the number of men working in that mine, thereby guaranteeing that while every man got an equal turn, the output of that mine was not reduced one ton. That is

why restrictions have been placed in a few mines. Wherever restrictions were placed for any other purpose our organization has always taken a stand against it and compelled the men to wipe it off their books if passed by their locals.

In regard to the number of men after a machine, I will say that rule was established when there was no union in the state of Illinois. That system is as old as machine mining is in the state of Illinois, and the operators have not protested against it in any other district or state conventions. I cannot understand why they should come here and enter a protest against something that has been going on in the state of Illinois for over twenty years to my knowledge.

In the foregoing sections, treating of the machine question, it appears that the equalization of turns is one of the means by which the output of machines is restricted, though not designed for that purpose. Since, however, equalization of turns prevails in pick mines as well as machine mines, the treatment of the subject and its bearing on output will be taken up apart from the treatment of machines.

The Illinois agreement contains the following sections :

Twenty-eighth. The operator shall see that an equal turn is offered each miner, and that he be given a fair chance to obtain the same. The checkweighman shall keep a turn bulletin for the turn-keeper's guidance. The drivers shall be subject to whomever the mine manager shall designate as turn-keeper in pursuance hereof.

In mines where there is both hand and machine mining an equal turn shall mean approximately the same turn to each man in the machine part of the mine, and approximately the same turn to each man doing hand work ; but not necessarily the same to each hand miner as to each man working with the machine.

The subdistrict agreements are as a rule silent upon the subject, as most of the Illinois mines have free turns, or an unlimited-turn system. That is to say, where each man can get all the cars he wants to load he has no objection to other men's wanting and getting more. The third-vein subagreement in Illinois says :

Except in the case of a closed room or room driven for air, or when an unlimited turn prevails, no miner shall have a "free turn," either day or night, or more than his share of cars.

The equality of opportunity in the mines, or of "turn," which means number of cars brought to the face of a miner's working-place in a given time, is one of the sticking points with a miner. His



education upon this point dates from years ago when, under a system of "truck stores" or "company houses," it is claimed the miner who did not live in a company house or deal at the company store, or some store where the company got a commission on sales, did not get enough cars to fill during the day to pay him for going into the mine. There have been times in Illinois, and elsewhere, when a miner would stay all day in a mine and never get a pit car to load. Discrimination against individuals in the matter of "turns" was used to drive men who had been active in strikes, or organizations, out of the mines. It was more subtle, more effective, and less likely to become public than a blacklist. Moreover, the pit boss could use it to get even with men personally distasteful to him. One acquainted with the abuses of "turns" practiced upon miners in former years cannot wonder that those abuses have had the effect of making the miners very uncompromising on this point. Overcrowding of mines and the advent of the "tonnage-getter," added to the old objections to free turns, make it difficult for the average miner to see that he is not surrendering his opportunity to live to the mere whim or like or dislike of a mine manager or a pit boss when he surrenders his right to equal turns of pit cars in a mine.

ETHELBERT STEWART

UNITED STATES DEPARTMENT OF LABOR,  
BUREAU OF LABOR STATISTICS

## XXXV

### THE HART SCHAFFNER & MARX LABOR AGREEMENT<sup>1</sup>

THE parties whose names are signed hereto purpose entering into an agreement for collective bargaining with the intention of agreeing on wage and working conditions and to provide a method for adjusting any differences that may arise during the term of this contract.

In order that those who have to interpret this instrument may have some guide as to the intentions and expectations of the parties when entering into this compact, they herewith make record of their spirit and purpose, their hope and expectations, so far as they are now able to forecast or state them.

On the part of the employer it is the intention and expectation that this compact of peace will result in the establishment and maintenance of a high order of discipline and efficiency by the willing coöperation of union and workers rather than by the old method of surveillance and coercion; that by the exercise of this discipline all stoppages and interruptions of work and all willful violations of rules will cease; that good standards of workmanship and conduct will be maintained and a proper quantity, quality, and cost of production will be assured; and that out of its operation will issue such coöperation and good will between employers, foremen, union, and workers as will prevent misunderstanding and friction and make for good team work, good business, mutual advantage, and mutual respect.

On the part of the union it is the intention and expectation that this compact will, with the coöperation of the employer, operate in such a way as to maintain, strengthen, and solidify its organization, so that it may be made strong enough, and efficient enough, to

<sup>1</sup>Published by the company, 1916. J. E. Williams, Chairman of the Board of Arbitration. See Earl Dean Howard, "The Development of Government in Industry," *Illinois Law Review*, Vol. X (1916), pp. 567-573.

coöperate as contemplated in the preceding paragraph; and also that it may be strong enough to command the respect of the employer without being forced to resort to militant or unfriendly measures.

On the part of the workers it is the intention and expectation that they pass from the status of wage servants, with no claim on the employer save his economic need, to that of self-respecting parties to an agreement which they have had an equal part with him in making; that this status gives them an assurance of fair and just treatment and protects them against injustice or oppression of those who may have been placed in authority over them; that they will have recourse to a court, in the creation of which their votes were equally potent with that of the employer, in which all their grievances may be heard and all their claims adjudicated; that all changes during the life of the pact shall be subject to the approval of an impartial tribunal, and that wages and working conditions shall not fall below the level provided for in the agreement.

The parties to this pact realize that the interests sought to be reconciled herein will tend to pull apart, but they enter it in the faith that by the exercise of the coöperative and constructive spirit it will be possible to bring and keep them together. This will involve as an indispensable prerequisite the total suppression of the militant spirit by both parties and the development of reason instead of force as the rule of action. It will require also mutual consideration and concession, a willingness on the part of each party to regard and serve the interests of the other, so far as it can be done without too great a sacrifice of principle or interest. With this attitude assured it is believed no differences can arise which the joint tribunal cannot mediate and resolve in the interest of coöperation and harmony.

## SECTION I. ADMINISTRATION

This agreement is entered into between Hart Schaffner & Marx, a corporation, and the Amalgamated Clothing Workers of America, and is effective from May 1, 1916, to April 30, 1919.

### OFFICERS OF THE AGREEMENT

The administration of this agreement is vested in a Board of Arbitration and a Trade Board, together with such deputies, officials,

and representatives of the parties hereto as are now or hereafter may be appointed for that purpose, whose duties and powers are hereinafter described.

#### BOARD OF ARBITRATION

The Board of Arbitration shall have full and final jurisdiction over all matters arising under this agreement, and its decisions thereupon shall be conclusive.

It shall consist of three members, one of whom shall be chosen by the union, one by the company, and the third shall be the mutual choice of both parties hereto and shall be the chairman of the Board. It is agreed that the Board as constituted under the old agreement shall be continued during the present agreement, William O. Thompson being the choice of the union, Carl Meyer the choice of the company, and J. E. Williams, chairman, being chosen by agreement of both parties.

It shall be the duty of the Board to investigate, and to mediate or adjudicate, all matters that are brought before it and to do all in its power to insure the successful working of the agreement. In reaching its decisions the Board is expected to have regard to the general principles of the agreement; the spirit and intent, expressed or implied, of the parties thereto; and, especially, the necessity of making the instrument workable, and adaptable to varying needs and conditions, while conserving as fully as possible the essential interests of the parties involved.

The line of practice already developed by the Board shall be continued. This contemplates that questions of fact and testimony shall in the main be considered by the Trade Board, while the Board of Arbitration will concern itself mainly with questions of principle and the application of the agreement to new issues as they arise. But this is not to be construed as limiting the power of the Board, which is broad enough to make it the judge of facts as well as principle when necessary and to deal with any question that may arise whose disposition is essential to the successful working of the agreement.

By agreement between the chief deputies cases may be heard and decided by the chairman of the Board alone.

## EMERGENCY POWERS

If there shall be a general change in wages or hours in the clothing industry which shall be sufficiently permanent to warrant the belief that the change is not temporary, then the Board shall have power to determine whether such change is of so extraordinary a nature as to justify a consideration of the question of making a change in the present agreement, and, if so, then the Board shall have power to make such changes in wages or hours as in its judgment shall be proper.

## TRADE BOARD

The Trade Board is the primary board for adjusting grievances, and shall have original jurisdiction over all matters arising under this agreement and the decisions relating thereto, and shall consider and dispose of all such matters when regularly brought before it, subject to such rules of practice and procedure as are now or may be hereafter established.

The Board shall consist of eleven members, all of whom, excepting the chairman, shall be employees of Hart Shaffner & Marx. Five members shall be chosen by the company and five by the union, and it is understood that these shall be selected in such manner as to be representative of the various departments—cutting and trimming, coat, vest, and trousers.

The Board shall be presided over by a chairman who shall represent the mutual interests of both parties hereto, and especially the interest of the successful working of this agreement. He shall preside at meetings of the Board, assist in investigation of complaints, endeavor to mediate conflicting interests, and in case of disagreement shall cast the deciding vote on questions before the Board. He shall also act as umpire on the cutting-room commission, and perform such other duties as may be required of him by the agreement or by the Board of Arbitration.

The chairman shall hold office during the term of the agreement, and in case of death, resignation, or inability to act, the vacancy shall be filled by the Board of Arbitration.

It is especially agreed that James Mullenbach, chairman under the former agreement, shall be retained under the present agreement.

Meetings of the Board shall be held whenever necessary at such times as the chairman shall direct. Whenever an authorized representative of both parties is present, it shall be considered a quorum. Each party is privileged to substitute an alternate in place of the regular member whenever they so desire. Should either side, after reasonable notice, fail to send a representative to sit on the Trade Board, then the chairman may proceed the same as if both parties were present.

Members of the Board shall be certified in writing to the chairman by the Joint Board of Hart Schaffner & Marx, and the proper official of the company; and any member, other than the chairman, may be removed and replaced by the power appointing him.

#### DEPUTIES

The deputies are the officers having direct charge of the execution of the provisions of this agreement in the interest of their respective principals. Each of the parties hereto shall have a sufficient number of deputies to properly take care of the work necessary to be done to keep the docket from being clogged with complaints and to insure an efficient working of the agreement. They shall have power to investigate, mediate, and adjust complaints, and settlements made by the deputies of the parties in dispute shall be legally binding on their principals. In case of appeal to the Trade Board or Board of Arbitration the deputies may represent their respective principals before these Boards, and shall have power to summon and examine witnesses, to present testimony or evidence, and do such other things as may be necessary to place their case properly before the trial body, and such body shall see to it that they be given adequate opportunity and facility for such presentation, subject to the usual rules of procedure.

One of the deputies on each side shall be known as the chief deputy, and the statement of the chief deputy shall be regarded as an authoritative presentation of the position of his principal in any matter in controversy. Unless reversed or modified by either of the trial boards the agreement of the chief deputies in all matters over which they or their principals have authority shall be observed by all parties.

The union deputy shall have access to any shop or factory for the purpose of making investigations of complaints; but he shall in all cases be accompanied by the representative of the employer. Provided, that the latter may at his option waive his right to accompany him; also that in minor matters, where convenience or expedition may be served, the union deputy may call out the shop chairman to obtain information without such waiver.

The deputies shall be available to give their duties prompt and adequate attention, and shall be subject to the direction of the Trade Board in all matters relating to the administration of this agreement.

#### QUALIFICATIONS OF DEPUTIES

Each deputy, in order to qualify for duty, must have a commission signed by the proper official representing the union or the company, and said commission must be countersigned by the chairman of the Trade Board. Deputies must be either employees of Hart Schaffner & Marx or persons who are connected with the Joint Board of Hart Schaffner & Marx.

#### SHOP REPRESENTATIVE

The union shall have in each shop a duly accredited representative authorized by the Joint Board who shall be recognized as the officer of the union having charge of complaints and organization matters within the shop. He shall be empowered to receive complaints and be given sufficient opportunity and range of action to enable him to make proper inquiry concerning them. When necessary for the shop representative to leave his place to investigate complaints, the foreman may, if he deems it necessary, ask to be informed of the purpose of his movements, and the representative shall comply with his request.

It is understood that the shop representative shall be entitled to collect dues and perform such other duties as may be imposed on him by the union, provided they be performed in such manner as not to interfere with shop discipline and efficiency.

It is expected that he shall represent the coöperative spirit of the agreement in the shop and shall be the leader in promoting that amity and spirit of good will which it is the purpose of this instrument to establish.

The coöperative spirit enjoined on the shop representative in the foregoing paragraph shall be expected in equal degree from the shop superintendent, who shall be expected to contribute his best efforts to promote harmony and good will in the shops.

## SECTION II. PROCEDURE

### WHEN GRIEVANCES ARISE

When a grievance arises on the floor of the shop, the complainant shall report it with reasonable promptness to the shop representative, who shall present it without undue delay to the shop superintendent. These two may discuss the complaint in a judicial temper, and may endeavor to agree to an adjustment. It is understood, however, that they are not a trial board, and it is not expected that they shall argue or dispute over the case. In the event that the shop representative is not satisfied with the action of the superintendent, he may promptly report the matter to his deputy, with such information as will enable him to deal advisedly with the case.

Failure to comply with these provisions for the regulation of shop transactions shall subject the offender to discipline by the Trade Board.

Informal oral adjustments made by shop officials are subject to revision by the Trade Board, and are not binding on their principals unless ratified by the chief deputies.

### ADJUSTMENT BY DEPUTIES

When the shop officers report a disputed complaint to their respective deputies, they shall give it such investigation as its nature or importance demands, either by visitation to the shop or by the taking of testimony, and shall make an earnest endeavor to reach a settlement that will be just and satisfactory to all the parties in dispute.

### DISAGREEMENT BY DEPUTIES

In the event of a failure to agree on an adjustment, the deputies shall certify the case for trial to the Trade Board, agreeing on a written statement of facts if possible. In certifying such disagreement



the deputy appealing to the Board shall file a statement stating specifically the nature of the complaint alleged with the Trade Board, and shall furnish a copy to the representative of the dissenting party, who shall have at least twenty-four hours to prepare his answer unless otherwise agreed on; provided, that by direction of the chairman of the Trade Board emergency cases may be brought to trial at once. Where no statement has been filed in writing within a reasonable time after disagreement of the deputies it may be assumed that the disagreement no longer exists, and the case may be considered settled.

#### DOCKET AND RECORDS

The chairman of the Trade Board shall keep a docket in which all cases shall be entered in the order of their arising. Unless otherwise directed by the chairman, cases shall be heard in the order of their filing. Duplicate records shall be made by the Board, one copy of which shall be retained by the chairman and one given to the chief deputy for the union. Such records shall contain all complaints filed with the Board, orders or decisions of the Board or of the deputies or of any committee, calendars of pending cases, and such other matter as the Trade Board may order placed upon the records.

#### DIRECT COMPLAINTS

Complaints may be made directly by either party, without the intervention of a shop representative, whenever it desires to avail itself of the protection of the agreement; but a statement of the facts and grounds of such complaints must be filed in writing as hereinbefore provided. Unless written notice has been filed, it may be presumed, officially, that no complaint exists.

#### DECISIONS, APPEALS, ETC.

All decisions of the Trade Board shall be in writing, and copies given to the representatives of each party. Should either party desire to appeal from the decision, it shall file with the Board a notice of its intention so to do within ten days of the date of the decision. Or if either party desires an amendment or modification of the decision, or a stay of execution pending the appeal, it may make

a motion in writing to that effect, and the chairman shall use his discretion in granting it. In certifying the case to the Board of Arbitration the chairman shall make a summary of the case in writing, giving the main facts and the grounds for his decision.

#### NUMBER OF HIGHER TRIAL BOARD

On being notified of the appeal to the Board of Arbitration, said appeal may be heard by the chairman, as representative of the Board, if both parties agree to it and it is acceptable to him. He shall, however, have the right to call for the full Board if in his judgment the situation requires it. In the event that the representative of the Board of either party is unable to attend a Board meeting, such party may at its discretion furnish a substitute.

#### HEARING, HOW CONDUCTED

The chairman shall determine the time and place of meeting and shall notify all the parties in interest. Each party shall prepare the case in advance, and have its testimony, evidence, and facts in readiness for the hearing. The Board shall give each party ample opportunity to present its case, but shall be the judge of procedure and shall direct the hearing as to its order and course. After giving an adequate hearing of the evidence and arguments the Board shall render its decision in writing, and shall furnish copies to the chief deputies of each party and to the chairman of the Trade Board. In the event that the Board is unable to reach a unanimous decision, the decision of a majority shall be binding.

#### MOTIONS FOR REHEARING

The Board may after a reasonable time grant a rehearing of any decision, if, in its judgment, there appear sufficient reasons for doing so. Decisions are to be regarded as the Board's best solution of the problem offered to it at the time of hearing, but as the problem changes with time and experience it is proper that there should be afforded a reasonable opportunity for rehearing and review. Motions for a rehearing shall be made in writing, and shall set forth the reason for the request.

## ENFORCEMENT OF DECISIONS

All decisions, whether of deputies, Trade Board, or Board of Arbitration, shall be put into execution within a reasonable time, and failure to do so, unless for explainable cause, shall convict the delinquent party of disloyalty to the agreement. The party in error shall be notified of the charge, and suitable discipline imposed. The chief deputy of each party shall be held responsible in the first instance for enforcement of decisions or adjustments herein referred to, and shall be held answerable, primarily, to the trial board.

## SECTION III. RATES AND HOURS

## SCHEDULES OF PIECEWORK RATES

The prices and rates of pay that are to be in force during the life of this agreement are set forth in the schedules prepared for that purpose, duly authenticated by the proper signatures, which are made a part hereof.

## HOURS OF WORK

The hours of work in the tailor shops shall be forty-nine per week, with the Saturday half holiday.

## MINIMUM WAGE

The minimum-wage scale in the tailor shop shall be as follows :

	1ST MONTH	2D MONTH	3D MONTH
Machine operators (male and female)	\$5.00	\$7.00	\$9.00
Women in handwork sections . . .	5.00	6.00	8.00
Men, 18 years and over, not operators	8.00	10.00	12.00
All men not included in above . . .	8.00	9.00	10.00
Inspector tailors (men) . . . . .	16.00		

## OVERTIME

For work done in excess of the regular hours per day, overtime shall be paid to pieceworkers of 50 per cent in addition to their piecework rates ; to the week-workers at the rate of time and a half ;

no work shall be allowed on Sundays or legal holidays. Christmas, New Year's, Decoration Day, Fourth of July, Labor Day, and Thanksgiving Day shall be observed as holidays.

#### WEEK-WORKERS' SCALE

It is agreed that the question of classified wage scale and periodical increase of pay for service shall remain in the hands of Messrs. Mullenbach, Campbell, and Marimpietri, to whom it was referred by the Conference Committee, until they are ready to report.

The week-work schedule as agreed on by the Committee, which has been accepted and signed by both the parties hereto, is hereby made a part of this agreement, subject to any changes that may be made as provided for above.

#### PIECE-RATE COMMITTEE

Whenever a change of piece rate is contemplated the matter shall be referred to a specially appointed Rate Committee, who shall fix the rate according to the change of work. If the committee disagree, the Trade Board shall fix the rate. In fixing the rates the Board is restricted to the following rule:

Changed rates must correspond to the changed work, and new rates must be based upon old rates where possible.

#### HOOR RATES FOR PIECEWORKERS

In case workers are changed from piece to hour work, the hour rates for such pieceworkers shall be based on their earnings on piecework.

#### CHANGING OPERATIONS

In the event a pieceworker is required to change his mode of operation so that it causes him to lose time in learning, his case may be brought to the Rate Committee for its disposition.

## SECTION IV. PREFERENCE

## THE PREFERENTIAL SHOP

It is agreed that the principle of the preferential shop shall prevail, to be applied in the following manner :

Preference shall be applied in hiring and discharge. Whenever the employer needs additional workers, he shall first make application to the union, specifying the number and kind of workers needed. The union shall be given a reasonable time to supply the specified help, and if it is unable or for any reason fails to furnish the required people, the employer shall be at liberty to secure them in the open market as best he can.

In like manner, the principle of preference shall be applied in case of discharge. Should it at any time become necessary to reduce the force in conformity with the provisions of this agreement, the first ones to be dismissed shall be those who are not members of the union in good and regular standing.

## DISCIPLINE OF UNION MEMBERS

The Trade Board and Board of Arbitration are authorized to hear complaints from the union concerning the discipline of its members and to take any action necessary to conserve the interests of the agreement. The members referred to herein are those who have joined, or who may hereafter join, the Amalgamated Clothing Workers of America.

## PREFERENCE IN TRANSFERS

If it becomes necessary to transfer workers from one shop to another, the nonunion workers shall be the first to be transferred, unless, at request of the foreman, union workers are willing to go.

Or if it becomes necessary in the judgment of the company to transfer a worker from a lower to a higher paid section or operation, it is agreed that union workers shall have preference in such transfers. Provided, that nothing herein shall be construed to be in conflict with the provision relating to transfer for discipline, and provided, that they are qualified to perform the work required and that their departure from their section does not work to the disadvantage of that section.

## OVERCROWDING OF SECTIONS

Overcrowding of sections is important in this agreement as the point at which the provision for preference becomes operative. It is agreed that when there are too many workers in a section to permit of reasonably steady employment, a complaint may be lodged by the union, and if proved, the nonunion members of the section, or as many of them as may be required to give the needed relief, shall be dismissed. For the purpose of judging the application of preference the Trade Board shall take into consideration the actual employment condition in the section, as to whether there are more people employed at the time of complaint than are needed to do the work, and whether they, or any of them, can be spared without substantial injury to the company. If it is found that the section can be reduced without substantial injury, the Trade Board shall enforce the principle of preference as contemplated in the agreement.

## AVOIDANCE OF INJURY

Among the things to be considered in the enforcement of preference are the need of maintaining an adequate balance of sections, or the requirements of the busy season, the difficulty of hiring substitutes, and the risk of impairing the efficiency of the organization. The claims for enforcement of preference and for avoidance of injury to the manufacturing organization are to be weighed by the Trade Board, and the interests of both claims safeguarded as far as possible, the intention being to enforce preference so far as it can be done without inflicting substantial injury on the company.

## PREFERENCE OF SENIORITY

If in order to properly balance sections a reduction of force be required greater than can be secured by the laying off of a nonunion worker as provided for herein, then there may be laid off those who are members of the union in the order of their seniority who have been in the employ of the company for a period of six months or less, provided that any exceptionally efficient worker, or any especially valuable member of the union, may be exempted from the rule of seniority. Provided, also, the company shall give notice to the chief deputy of its intention to discharge under this clause, and if he fails to agree the matter shall be referred to the Trade Board.

## SECTION V. WORKING CONDITIONS

## DISCIPLINE

The full power of discharge and discipline remains with the company and its agents; but it is understood that this power should be exercised with justice and with due regard for the reasonable rights of the employee, and if an employee feels that he has been unjustly discharged, he may have appeal to the Trade Board, which shall have the power to review the case.

Every person suspended shall receive a written notice directing him to appear at the office of the company for a decision. Every suspension notice properly presented to the discipline officer of the company must be disposed of within six working hours from the time of its presentation, and a definite decision announced to the suspended person.

## STOPPAGES

In case of a stoppage of work in any shop or shops, a deputy from each side shall immediately repair to the shop or shops in question.

If such stoppage shall occur because the person in charge of the shop shall have refused to allow the people to continue work, he shall be ordered to immediately give work to the people, or in case the employees have stopped work, the deputies shall order the people to immediately return to work, and in case they fail to return to work within an hour from such time, such people shall be considered as having left the employ of the corporation and shall not be entitled to the benefit of these rules.

## DETENTION IN SHOP

Workers shall not be detained in the shops when there is insufficient work for them. The company or its agent shall exercise due foresight in calculating the work available, and as far as practicable shall call only enough workers into the factory to do the work at sight. And if a greater number report for work than there is work for, those in excess of the number required shall be promptly notified and permitted to leave the shop. The work on hand shall be divided as equally as may be between the remaining workers.

## COMPLAINT SLIPS

Before or at the time of entering any complaint against any employee in the complaint book said employee shall be notified thereof so he may have the opportunity of notifying a deputy of the Board and have said complaint investigated.

## LAY-OFFS

Workers who are dismissed may be given lay-off memoranda allowing them to return to their shops or factories, trimming or cutting rooms, when there is need for their services. Provided, this clause shall not be construed to give such worker precedence over union members, or to interfere in any way with the provision for preference in hiring.

## TRANSFER OF EMPLOYEES

The company has the right to transfer employees for purposes of administration or discipline, subject to review by the Trade Board. If the Board finds that any transfer is being made to lower wages, or for any discrimination or improper purpose, or if injustice is being done the worker by the transfer, the Board may adjust the complaint.

## SECTION VI. GENERAL PROVISIONS

## LAY-OFF OF WORKERS

No union member who is a permanent worker shall be laid off in the tailor shops except for cause, whether in the slack or busy season, except as provided herein. Cause for temporary lay-off may be alternation of working periods in slack times, reorganization or reduction of sections, lawful discipline, and such other causes as may be provided for herein or directed by the Trade Board.

## COÖPERATION TO ABOLISH WAITING

The company and the deputies have agreed to coöperate to abolish all unnecessary waiting in the shops.

## DIVISION OF WORK

During the slack season the work shall be divided as nearly as is practicable among all hands.



## ABANDONMENT OF POSITION

Whenever any employee shall have absented himself from his accustomed place without giving an acceptable reason to the foreman or other officers in charge of his work before the end of the second business day of his absence, the employer may consider his position forfeited. Notice of absence and reason therefor must be given to foreman by messenger, mail, or telephone.

## ABOLISHMENT OF SECTION

When sections are abolished, the company and its agents shall use every effort to give the displaced workers employment as much as possible like the work from which they were displaced, within a reasonable time.

## SICKNESS

Any workers who are absent on account of sickness shall be re-instated in their former positions if they return within a reasonable time.

## TRADE-BOARD MEMBERS

Complaints against members of the Trade Board as workmen are to be made by the foremen to the Trade Board. Any action of any employee as a member of the Trade Board shall not be considered inimical to his employment with the corporation. No member of a Trade Board shall sit on a case in which he is interested, or to which he is a party.

## UNION MEMBERSHIP

The provisions for preference made herein require that the door of the union be kept open for the reception of nonunion workers. Initiation fee and dues must be maintained at a reasonable rate, and any applicant must be admitted who is not an offender against the union and who is eligible for membership under its rules. Provided, that if any rules be passed that impose an unreasonable hardship, or that operate to bar desirable persons, the matter may be brought before the Trade Board or Board of Arbitration for such remedy as it may deem advisable.

## THE OLD AGREEMENT

The provisions of the old agreement and the decisions based thereon shall be regarded as being in force except as they may be modified by, or are not in conflict with, the provisions of the present agreement.

## SECTION VII. LOYALTY TO THE AGREEMENT

Experience suggests that there are certain points of strain which it would be wise to recognize in advance and to safeguard as far as possible. Among the points to be safeguarded are the following :

1. When dissatisfaction arises over change of price or working conditions, it is believed that the agreement provides a remedy for every such grievance that can arise, and all complainants are urged and expected to present their cases to the proper officials and await an adjustment. If anyone refuses to do this, and instead takes the law in his own hands by inciting a stoppage or otherwise foments dissatisfaction or rebellion, he shall, if convicted, be adjudged guilty of disloyalty to the agreement and be subject to discipline by the Trade Board.

2. Strain may arise because of unsatisfactory personal relations between workers and officials. The company's officials are subject to the law as are the workers, and equally responsible for loyalty in word and deed, and are subject to discipline if found guilty of violation. Any complaints against them must be made and adjudicated in the regular manner. They are to respect the workers and be respected by them in their positions and supported in the proper discharge of their duties. Anyone indulging in improper language or conduct calculated to injure them or to break down their authority in the shop shall be adjudged guilty of disloyalty and disciplined accordingly.

3. Officials of the union are equally under the protection of the agreement when in the exercise of their duties as are the officials of the company, and any words or acts tending to discredit them or the union which they represent, or which are calculated to injure the influence or standing of the union or its representatives, shall be considered as disloyalty to the agreement, and the offender shall be subject to discipline by the Trade Board, provided, however, that

no reasonable criticism or expression of disagreement expressed in proper language shall be deemed a violation within the meaning of this section.

4. If any worker shall willfully violate the spirit of the agreement by intentional opposition to its fundamental purposes, and especially if he carry such willful violation into action by striking and inciting others to strike or stop work during working hours, he shall, if charge is proven, be subject to suspension, discharge, or fine. Provided, that if a fine is imposed, its amount shall be determined by the chairman of the Trade Board and shall not be less than \$1 or more than \$5 for each offense.

5. If any foreman, superintendent, or agent of the company shall willfully violate the spirit of this agreement, and especially if he fails to observe and carry out any decision of the Trade Board or Board of Arbitration, he shall, if charge is proven, be subject to a fine of not less than \$10 or more than \$100 for each offense, at the discretion of the chairman of the Trade Board.

## SECTION VIII. CUTTING AND TRIMMING DEPARTMENTS

The cutting and trimming departments shall be subject to the general provisions of this agreement, and to the bases and provisions of the old agreement except as they may be modified by, or found to be in conflict with, the special provisions agreed on for these departments. It is understood that these special provisions are intended to change certain features of the old agreement, and if they are found to be in conflict, the new provisions are to be considered as the guide of practice and as representing the latest and, therefore, the most authoritative expression of the wills of the parties hereto. The new special provisions are as follows:

1. The principle of preference as applied in the cutting and trimming rooms shall be as before, except that the clause relating to cutters who are exempted from union obligations is expressly defined as being strictly limited to the individuals now on the exemption list. Should the number on that list be for any reason reduced, it is understood that no other cutters and trimmers can be added.

2. The company shall not reduce the wages of any cutter. The company shall report to the commission all failures of cutters to

produce their quota of work when in its judgment the delinquency is not caused by the conditions of the work. The commission shall investigate the matter and advise with the cutter concerning it. At the end of a period sufficiently long to determine the merits of the case, the cutters' commission shall, if it deem necessary, find measures to discipline cutters to conform to their production. In judging the merits in such instances the commission shall use the principle of comparative efficiency.

3. All cutters whose present wages are less than \$26 per week shall receive an increase of \$1 per week. This increase shall not be taken into account by the commission in calculating the quota of work required by such cutter.

4. The company shall prefer men now in the trimming room when increasing the number of apprentice cutters.

5. The salaries of experienced cutters who are employed temporarily shall for the first two weeks be at a rate not less than the salaries they received in their last position. After two weeks the temporary cutters shall be paid on the same basis as the regular men, their salary to be fixed by the cutters' commission on the basis of their production and their comparative efficiency.

6. The company shall continue the practice of paying cutters for Christmas, New Year's, Decoration Day, Fourth of July, Labor Day, and Thanksgiving Day.

#### PAPER-CUTTING DEPARTMENT

All men who cut paper patterns shall be members of the union; except that, by special agreement, one man, Mr. Lindsay, may be exempted from such requirement, and shall be added to the existing exempted group.

The three apprentices now in the paper-cutting department shall have the status, privileges, and protection of the regular cutting-room apprentices, including the right to learn all branches of the trade, and be subject to the same requirements and provisions. The ratio of apprentices to cutters in the paper-cutting department shall not exceed that which obtains now; namely, three apprentices to seven permanent cutters.

The company may employ such other boy help in this department as is needed, and such boys may, at its option, be promoted to

positions as apprentices when vacancies arise, but not in excess of the total number of apprentices provided for in the agreement.

Permanent graders employed in the grading department may work at paper cutting temporarily when there is not sufficient work in their own department. Boys who are not apprentices shall not take the places of blockers in any permanent manner, but they may for short times, to fill odd unemployed hours, be permitted to try to do blocking in the slack seasons.

#### DAMAGE DEPARTMENT

All employees in the damage department who recut parts of garments shall be members of the union or exempted men. The manager of the department and helpers who do not cut parts shall not be members of the union.

#### TRIMMING DEPARTMENT

1. All men now on the trimmers' pay roll who are receiving not to exceed \$15 are to be increased \$2 per week. All men receiving a weekly wage of over \$15 and not exceeding \$20 shall receive an increase of \$1 per week; except that apprentice trimmers having been employed less than six months are to receive an increase of \$1 per week.

2. The following periodical increases shall be granted during the term of this agreement: Men receiving under \$12 shall receive an increase of \$1 per week every three months until their wages shall be \$12 per week. Men receiving over \$12 and less than \$18 shall receive an increase of \$1 every six months until their wages shall be \$18 per week. Men receiving over \$18 per week and less than \$20 shall receive an increase of \$1 per week every year until their wages shall be \$20 per week.

3. All men starting to work on the band-saw machines shall receive not less than \$18 per week and shall receive an increase of \$1 per week every six months until their wages are \$20. Thereafter they shall receive an increase of \$1 per week every year until they reach the rate of \$24. No man shall be assigned to the band-saw machine permanently until he has been employed in the trimming room two years.

4. So far as practicable, the apprentices in the trimming room shall begin on their work on the lower grades of the trade and shall be advanced gradually to the more difficult ones.

5. Apprentices shall not be permanently transferred to work requiring the use of any electric machines until they have been employed for one year or more.

6. The wages of experienced men employed shall be determined in the same manner as in the cutting room.

7. The jack boys and canvas pickers are to be under the jurisdiction of the union, with this express provision: That these two sections are not to be under the agreed scale for trimmers, but are to be subject to a special scale of wages, which scale is to be subject to the decision of the Board of Arbitration.

#### THE EXPERIENCE OF HART SCHAFFNER & MARX WITH COLLECTIVE BARGAINING<sup>1</sup>

During the past four years this company has concerned itself very deeply in developing its relations with its employees. Labor disturbances brought keenly to our attention the necessity of having the good will of the workers in order that we might maintain and preserve the good will of our customers and insure the stability of our business.

We are glad to give an outline of our experience, believing it has yielded results in the form of certain principles of policy and action which may be helpful in the promotion of industrial peace.

In making this statement we are particularly concerned that the formal and external features of our plan shall not be confused with the real and vital substance of the arrangements, to the neglect of the spirit and of the principles which are in reality responsible for whatever progress we have made.

After an opportunity of several years to study causes and effects we are convinced that the prime source of difficulty was a lack of contact and understanding between our people and ourselves. The failure to adjust petty grievances and abuses became the cause of irritation entirely disproportionate to their importance when taken

<sup>1</sup>Prepared for the Federal Industrial Relations Commission as a part of testimony for the hearing at Washington, April, 1914.

singly, but which in accumulation became the main ground for complaint.

There was no special complaint against the hours of work, which were fifty-four per week, and which have since been reduced to fifty-two. The physical working conditions were good and in fact very far advanced compared with the general conditions in the industry. There was a general demand for higher wages, but we have always looked upon this as an accompanying demand rather than a first cause of difficulty.

A settlement was reached by an agreement to arbitrate, one arbitrator to be named by each side and the two to choose a third. It was not possible to agree upon the third member and the efforts to arbitrate were started with only the two partisan men on the board. This proved to be a good thing. For the time being it forced us to settle matters by agreement and compromise rather than by arbitrary decision, and this method has become a distinctive feature of the whole system. A third arbitrator was eventually chosen, and he is a man peculiarly capable of aiding in creating sympathetic understanding on the part of all.

Favorable results did not appear at once, but were the natural and legitimate effects of various devices introduced to meet difficult situations as they arose, and of certain principles of fair dealing, into harmony with which we have attempted to bring our business policies.

In addition, the company created a labor department. A university professor, trained in economics, was engaged to study the situation and draft a plan for promoting better relations with our employees. At the beginning the task appeared stupendous, as grievances were highly magnified and exaggerated by frequent reiteration of the more radical leaders for the purpose of keeping the war spirit at a high temperature.

This new department, headed by Professor Earl Dean Howard of Northwestern University, gradually assumed certain functions in which the workers had a direct interest and administered them with the main purpose always in view. The chief duties of the labor department now are: the maintenance of a system for the prompt discovery and investigation of any abuses or complaints existing anywhere among the employees; the recommendation of measures

designed to eliminate the source of the complaint; protecting the company's interests in the Board of Arbitration and the Trade Board (a court of first instance established to adjust complaints and interpret the agreements); negotiating with the business agents of the unions and satisfying their demands as far as possible; administering all discipline for all the factories (all executives have been relieved of this function); general oversight of all hiring; the maintenance of hospital and rest rooms; the administration of a charity fund for unfortunate employees, of a loan fund, and of the Workman's Compensation Act; responsibility for the observance of the state and municipal laws regarding child labor, health and safety, also for the strict observance of all agreements with the unions or decisions of the two Boards; education of the foremen and people in courtesy, patience, mutual helpfulness, and other peace-producing qualities; suggesting devices for the amelioration of hardships incidental to the industry and for the higher efficiency of operating.

Industrial peace will never come so long as either employer or employee believes that he is deprived of rights honestly belonging to him. Our experience has taught that the business man in authority is a trustee of various interests, including his own, and if he administers his business so as to conserve and harmonize these interests to the best of his ability, he is most likely building an enduring success.

A labor department critical of everything touching the interests of the workers, a Trade Board and a Board of Arbitration constantly reviewing and discussing policies and methods, protect us against ourselves and make it impossible to violate or overlook the rights of the employees. These agencies undoubtedly create limitations which at times seem vexatious, but we have found that in the long run legitimate progress has been helped rather than hindered thereby. Innumerable cases have arisen where we have been obliged to change plans and policies much against our will, yet where the final results were better because of the change.

Arbitration and conciliation should be applied to all departments of a business wherever there is a conflict of interest. If nothing more, it insures exhaustive discussion of every matter of importance, gives everybody an opportunity to express his opinions, frequently brings to light valuable suggestions, and makes possible a higher



degree of coöperation and teamwork. It is a method to be employed continuously to secure harmony and satisfaction. Patience and self-control are essential in administering a business on this basis. It is human nature to resent interference and to desire unrestricted liberty of action, but these conditions are not necessary and are often inimical to true success. Few men can use unlimited power wisely, and no wise man will dispense with checks which tend to keep him in the right path; certainly he will approve of checks calculated to restrain his agents from arbitrary and unjust acts toward fellow employees.

The application of these ideas to the labor problem, especially as a help to the employer in deciding what attitude to take toward trade-unionism, has produced favorable results with us. If the employer voluntarily limits his own authority and agrees to conduct his business according to the rule of reason and even-handed justice as interpreted by an outside authority, such as an arbitration board, he must insist that the organized employees submit to the same limitation, otherwise his sacrifice will be futile and his submission to injustice cowardly.

Unions should be recognized and favored in the same proportion as they manifest a genuine desire to govern themselves efficiently. All agreements should be so drawn as to release the employer from his obligations whenever the unions fail to observe theirs. Arbitration boards, officials in charge of labor matters, and union leaders should direct their operations and make their decisions with the one purpose always in mind; namely, to make it profitable and easy for all parties to acquiesce in the rule of reason and justice, and dangerous and difficult for them to attempt to get unjust advantage. We did not realize, and we believe the majority of employers do not yet realize, the extent to which the attitude and conduct of their organized employees reflect their own policies and conduct. Strict adherence to justice, especially if interpreted to the people by a board in whom they have confidence, will gradually educate them and their leaders to see the advantage of this method. It is fortunate for the employer if his own employees have an autonomous organization, influenced as little as possible by outsiders.

In our own business, employing thousands of persons,—some of them newly arrived immigrants, some of them in opposition to the

wage system, hostile to employers as a class,—we have observed astonishing changes in their attitude during three years under the influence of our labor arrangements. They seem to understand that they can rely upon promises made to them by the company; that all disputes will be finally adjusted according to just principles interpreted by wise arbitrators.

Disciplinary methods are a prolific source of dispute with employees, and it is difficult to avoid offending their sense of justice, especially if they are not fully informed of all the facts in the case and hear only one side. Moreover, petty officials are not likely to show good judgment in administering disciplinary power or to have correct theories about it; very frequently they are tempted to satisfy private dislikes under pretense of disciplining. We regard it as an essential element in maintaining industrial peace to centralize the administration of discipline in one official having no interest except to maintain the efficiency of the shops without disturbing the harmony and good will of the people.

Our theory of discipline is that it should be as mild as possible consistent with effectiveness in securing the desired results. Complaint memoranda are given as warnings by the foreman; if these are disregarded, suspension slips are next given, which remove the offenders from the pay roll until reinstated by the discipline officer. An investigation is made, and, as a rule, the suspended person is restored to his position on probation. This method is continued until it becomes apparent that the employee is either hopelessly incompetent or insubordinate, whereupon a temporary lay-off or discharge may follow. Our Trade Board, composed of workmen and foremen, presided over by a neutral, outside chairman, will give a hearing to the case if requested, and may order a reinstatement or modification of the penalty. Appeal from this tribunal may be taken to the Board of Arbitration for final adjudication. In spite of its apparent complexity the administration of discipline has become very satisfactory to both sides, and very few cases even come before the Trade Board and for many months none have been appealed.

Much depends upon the leaders of the workers. We have had some experience with misinformed and self-seeking men who secured temporary influence over the people, but somehow they failed to thrive in the atmosphere of our arrangement. Some of these same

men have been delivered of their worst qualities as they have learned the advantage of better methods of dealing. The system seems to work out a selection of the fittest candidates and trains them to become efficient leaders and executives, skilled in negotiation, in pleading and cross-examination before the judicial boards, in organizing, disciplining, and leading the people. One of the leaders in particular developed a wonderful influence over all who came in contact with him on account of his high ideals, his patience under trying circumstances, and his indomitable faith in the ultimate success of right method.

At the beginning of our experiment we believed that the labor union was a competitor for the good will of the people and that both could not have this good will at the same time; we feared that the union would get the credit for anything granted to the people, thus nullifying the good effect to the company of any concessions or benefits given to them. Concessions wrung from the reluctant employer by the union through a Board of Arbitration, especially if the withholding of the concession seems contrary to the sense of justice of the workers, of course gain no good will for the company.

Without some kind of organization among the people there are no responsible and authorized representatives with whom to deal, and the real interests of the people as they see them themselves are likely to be overlooked or disregarded. The chosen representatives are made to feel the dignity and honor of their positions so long as they deal fairly and reasonably; those who adopt a different policy invariably fail and retire with considerable loss of respect and prestige. Those whose motives are good and who can reason intelligently grow in the esteem of their fellows through their success in negotiation and arbitration. They appreciate the consideration shown them by the company and the arbitrators and reciprocate by proclaiming the fairness of the company.

One of the most important functions of our labor department is welfare work,—giving advice and material assistance to unfortunate employees, improving the working conditions in the shops, maintaining rest rooms and libraries, etc.,—but this is not done for the purpose of more easily depriving the workers of their right to be represented in all matters in which their interests are involved. Workingmen

are quick to resent the substitution of favors for justice. Welfare work, however, in connection with general fair dealing, is very effective in securing good will, especially if it increases the personal contact between the officials of the company and the employees.

Not the least of the advantages we have derived from our system is the reaction of the ideas and ideals, first applied in the labor department, upon the other departments, and particularly upon the executive staff of the manufacturing department. Inefficient methods of foremen, lack of watchful supervision, and inaccurate information as to prevailing conditions on the part of higher executives,—these could not long survive when every complaint brought by a workman was thoroughly investigated and the root cause of the trouble brought to light.

The unexpected and indirect results of our labor policy in increasing the efficiency, reforming the conduct, and raising the intelligence of the executives coming into contact with the system have been as profitable and satisfactory as the direct result, i.e. the creation of harmony and good will on the part of the people toward the company.

A summary of the essentials of the system which has produced such gratifying results in our institution would include: a labor department, responsible for industrial peace and good will of the employees, thereby of necessity fully informed as to their sentiments, their organizations, and really representing their interests in the councils of the company; a means for the prompt and final settlement of all disputes; a conviction in the minds of the employees that the employer is fair and that all their interests are safeguarded; constant instruction of the leaders and people in the principles of business equity, thus gradually evolving a code accepted by all parties in interest, serviceable as a basis for adjustment of all difficulties; the development of efficient representation of the employees—honest, painstaking, dignified, reasonable, eager to coöperate in maintaining peace, influential with their people, and truly representative of their real interests; a friendly policy toward the union so long as it is conducted in harmony with the ethical principles employed in the business and an uncompromising opposition to all attempts to coerce or impose upon the rights of any group or to gain an unfair advantage;

and a management that guarantees every man full compensation for his efficiency and prevents anyone's receiving anything he has not earned.

Briefly expressed, it is simply the natural and healthy relation which usually exists between the small employer and his half-dozen workmen, artificially restored, as far as possible in a large-scale business where the real employer is a considerable group of executives managing thousands of workers according to certain established principles and policies.

HART SCHAFFNER & MARX

## XXXVI

### AMERICAN FEDERATION OF LABOR RECONSTRUCTION PROGRAM<sup>1</sup>

THE World War has forced all free peoples to a fuller and deeper realization of the menace to civilization contained in autocratic control of the activities and destinies of mankind.

It has caused a world-wide determination to overthrow and eradicate all autocratic institutions, so that a full measure of freedom and justice can be established between man and man and nation and nation.

It has awakened more fully the consciousness that the principles of democracy should regulate the relationship of men in all their activities.

It has opened the doors of opportunity through which more sound and progressive policies may enter.

New conceptions of human liberty, justice, and opportunity are to be applied.

The American Federation of Labor, the one organization representing labor in America, conscious that its responsibilities are now greater than before, presents a program for the guidance of labor, based upon experience and formulated with a full consciousness of the principles and policies which have successfully guided American trade-unionism in the past.

#### DEMOCRACY IN INDUSTRY

Two codes of rules and regulations affect the workers: the law upon the statute books and the rules within industry.

The first determines their relationship as citizens to all other citizens and to property.

<sup>1</sup> This program was drafted by the Committee on Reconstruction appointed by instruction of the Convention of the American Federation of Labor, held at St. Paul, Minnesota, June 10-20, 1918. The program was unanimously endorsed by the Executive Council of the American Federation of Labor.

The second largely determines the relationship of employer and employee, the terms of employment, the conditions of labor, and the rules and regulations affecting the workers as employees. The first is secured through the application of the methods of democracy in the enactment of legislation, and is based upon the principle that the laws which govern a free people should exist only with their consent.

The second, except where effective trade-unionism exists, is established by the arbitrary or autocratic whim, desire, or opinion of the employer, and is based upon the principle that industry and commerce cannot be successfully conducted unless the employer exercises the unquestioned right to establish such rules, regulations, and provisions affecting the employees as self-interest prompts.

Both forms of law vitally affect the workers' opportunities in life and determine their standard of living. The rules, regulations, and conditions within industry in many instances affect them more than legislative enactments. It is, therefore, essential that the workers should have a voice in determining the laws within industry and commerce which affect them equivalent to the voice which they have as citizens in determining the legislative enactments which shall govern them.

It is as inconceivable that the workers as free citizens should remain under autocratically made law within industry and commerce as it is that the nation could remain a democracy while certain individuals or groups exercise autocratic powers.

It is, therefore, essential that the workers everywhere should insist upon their right to organize into trade-unions, and that effective legislation should be enacted which would make it a criminal offense for any employer to interfere with or hamper the exercise of this right or to interfere with the legitimate activities of trade-unions.

## UNEMPLOYMENT

Political economy of the old school, conceived by doctrinaires, was based upon unsound and false doctrines, and has since been used to blindfold, deceive, and defeat the workers' demands for adequate wages, better living and working conditions, and a just share of the fruits of their labor.

We hold strictly to the trade-union philosophy and its developed political economy based upon demonstrated facts.

Unemployment is due to underconsumption. Underconsumption is caused by low or insufficient wages.

Just wages will prevent industrial stagnation and lessen periodical unemployment.

Give the workers just wages and their consuming capacity is correspondingly increased. A man's ability to consume is controlled by the wages received. Just wages will create a market at home which will far surpass any market that may exist elsewhere and will lessen unemployment.

The employment of idle workmen on public work will not permanently remove the cause of unemployment. It is an expedient at best.

There is no basis in fact for the claim that the so-called law of supply and demand is natural in its operations and impossible of control or regulation.

The trade-union movement has maintained standards, wages, hours, and life in periods of industrial depression and idleness. These in themselves are a refutation of the declared immutability of the law of supply and demand.

There is, in fact, no such condition as an iron law of wages based upon a natural law of supply and demand. Conditions in commerce and industry, methods of production, storing of commodities, regulation of the volume of production, banking systems, the flow and direction of enterprise influenced by combinations and trusts, have effectively destroyed the theory of a natural law of supply and demand as had been formulated by doctrinaire economists.

### WAGES

There are no means whereby the workers can obtain and maintain fair wages except through trade-union effort. Therefore economic organization is paramount to all their other activities.

Organization of the workers leads to better wages, fewer working hours, improved working conditions; it develops independence, manhood, and character; it fosters tolerance and real justice and makes for a constantly growing better economic, social, and political life for the burden-bearing masses.



In countries where wages are best the greatest progress has been made in economic, social, and political advancement, in science, art, literature, education, and in the wealth of the people generally. All low-wage-paying countries contrasted with America is proof for this statement.

The American standard of life must be maintained and improved. The value of wages is determined by the purchasing power of the dollar. There is no such thing as good wages when the cost of living in decency and comfort equals or exceeds the wages received. There must be no reduction in wages; in many instances wages must be increased.

The workers of the nation demand a living wage for all wage-earners, skilled or unskilled—a wage which will enable the worker and his family to live in health and comfort, provide a competence for illness and old age, and afford to all the opportunity of cultivating the best that is within mankind.

### HOURS OF LABOR

Reasonable hours of labor promote the economic and social well-being of the toiling masses. Their attainment should be one of labor's principal and essential activities. The shorter workday and a shorter work-week make for a constantly growing, higher, and better standard of productivity, health, longevity, morals, and citizenship.

The right of labor to fix its hours of work must not be abrogated, abridged, or interfered with.

The day's working-time should be limited to not more than eight hours, with overtime prohibited except under the most extraordinary emergencies. The week's working-time should be limited to not more than five and one half days.

### WOMEN AS WAGE-EARNERS

Women should receive the same pay as men for equal work performed. Women workers must not be permitted to perform tasks disproportionate to their physical strength or which tend to impair their potential motherhood and prevent the continuation of a nation of strong, healthy, sturdy, and intelligent men and women.

## CHILD LABOR

The children constitute the nation's most valuable asset. The full responsibility of the government should be recognized by such measures as will protect the health of every child at birth and during its immature years.

It must be one of the chief functions of the nation through effective legislation to put an immediate end to the exploitation of children under sixteen years of age.

State legislatures should protect children of immature years by prohibiting their employment, for gain, under sixteen years of age and restricting the employment of children of less than eighteen years of age to not more than twenty hours within any one week and with not less than twenty hours at school during the same period.

Exploitation of child life for private gain must not be permitted.

## STATUS OF PUBLIC EMPLOYEES

The fixing of wages, hours, and conditions of labor for public employees by legislation hampers the necessary exercise of organization and collective bargaining.

Public employees must not be denied the right of organization, free activities, and collective bargaining, and must not be limited in the exercise of their rights as citizens.

## COÖPERATION

To attain the greatest possible development of civilization, it is essential, among other things, that the people should never delegate to others those activities and responsibilities which they are capable of assuming for themselves. Democracy can function best with the least interference by the state compatible with due protection to the rights of all citizens.

There are many problems arising from production, transportation, and distribution which would be readily solved by applying the methods of coöperation. Unnecessary middlemen, who exact a tax from the community without rendering any useful service, can be eliminated.

The farmers, through coöperative dairies, canneries, packing houses, grain elevators, distributing houses, and other coöperative enterprises, can secure higher prices for their products and yet place these in the consumer's hands at lower prices than would otherwise be paid. There is an almost limitless field for the consumers in which to establish coöperative buying and selling, and in this most necessary development the trade-unionists should take an immediate and active part.

Trade-unions secure fair wages. Coöperation protects the wage-earner from the profiteer.

Participation in these coöperative agencies must of necessity prepare the mass of the people to participate more effectively in the solution of the industrial, commercial, social, and political problems which continually arise.

### THE PEOPLE'S FINAL VOICE IN LEGISLATION

It is manifestly evident that a people are not self-governing unless they enjoy the unquestioned power to determine the form and substance of the laws which shall govern them. Self-government cannot adequately function if there exists within the nation a superior power or authority which can finally determine what legislation, enacted by the people or their duly elected representatives, shall be placed upon the statute books and what shall be declared null and void.

An insuperable obstacle to self-government in the United States exists in the power which has been gradually assumed by the supreme courts of the federal and state governments to declare legislation null and void upon the ground that, in the court's opinion, it is unconstitutional.

It is essential that the people, acting directly or through Congress or state legislatures, should have final authority in determining which laws shall be enacted. Adequate steps must be taken, therefore, which will provide that in the event of a supreme court declaring an act of Congress or of a state legislature unconstitutional, and the people, acting directly or through Congress or a state legislature, reenacting the measure, it shall then become the law without being subject to annulment by any court.

## POLITICAL POLICY

In the political efforts arising from the workers' necessity to secure legislation covering those conditions and provisions of life not subject to collective bargaining with employers, organized labor has followed two methods: one by organizing political parties, the other by the determination to place in public office representatives from their ranks—to elect those who favor and champion the legislation desired and to defeat those whose policy is opposed to labor's legislative demands, regardless of partisan politics.

The disastrous experience of organized labor in America with political parties of its own amply justified the American Federation of Labor's nonpartisan political policy. The results secured by labor parties in other countries never have been such as to warrant any deviation from this position. The rules and regulations of trade-unionism should not be extended so that the action of a majority could force a minority to vote for or give financial support to any political candidate or party to whom they are opposed. Trade-union activities cannot receive the undivided attention of members and officers if the exigencies, burdens, and responsibilities of a political party are bound up with their economic and industrial organizations.

The experiences and results attained through the nonpartisan political policy of the American Federation of Labor cover a generation. They indicate that through its application the workers of America have secured a much larger measure of fundamental legislation—establishing their rights, safeguarding their interests, protecting their welfare, and opening the doors of opportunity—than have been secured by the workers of any other country.

The vital legislation now required can be more readily secured through education of the public mind and the appeal to its conscience, supplemented by energetic independent political activity on the part of trade-unionists, than by any other method. This is and will continue to be the political policy of the American Federation of Labor if the lessons which labor has learned in the bitter but practical school of experience are to be respected and applied.

It is, therefore, most essential that the officers of the American Federation of Labor, the officers of the affiliated organizations, state

federations, and central labor bodies, and the entire membership of the trade-union movement should give the most vigorous application possible to the political policy of the American Federation of Labor so that labor's friends and opponents may be more widely known and the legislation most required readily secured. This phase of our movement is still in its infancy. It should be continued and developed to its logical conclusion.

### GOVERNMENT OWNERSHIP

Public and semipublic utilities should be owned, operated, or regulated by the government in the interest of the public.

Whatever final disposition shall be made of the railways of the country in ownership, management, or regulation, we insist upon the right of the workers to organize for their common and mutual protection and the full exercise of the normal activities which come with organization. Any attempt at the denial by governmental authority of the rights of the workers to organize, to petition, to representation, and to collective bargaining, or the denial of the exercise of their political rights, is repugnant to the fundamental principles of free citizenship in a republic and is destructive of their best interest and welfare.

The government should own and operate all wharves and docks connected with public harbors which are used for commerce or transportation.

The American Merchant Marine should be encouraged and developed under governmental control, and so manned as to insure successful operation and protect in full the beneficent laws now on the statute books for the rights and welfare of seamen. The seamen must be accorded the same rights and privileges rightfully exercised by the workers in all other employments, public and private.

### WATERWAYS AND WATER POWER

The lack of a practical development of our waterways and the inadequate extension of canals have seriously handicapped water traffic and created unnecessarily high cost for transportation. In many instances it has established artificial restrictions, which have worked to the serious injury of communities, owing to the schemes

of those controlling a monopoly of land transportation. Our navigable rivers and our great inland lakes should be connected with the sea by an adequate system of canals, so that inland production can be more effectively fostered, the costs of transportation reduced, the private monopoly of transportation overcome, and imports and exports shipped at lower costs.

The nation is possessed of enormous water power. Legislation should be enacted providing that the governments, federal and state, should own, develop, and operate all water power over which they have jurisdiction. The power thus generated should be supplied to all citizens at rates based upon cost. The water power of the nation, created by nature, must not be permitted to pass into private hands for private exploitation.

#### REGULATION OF LAND OWNERSHIP

Agriculture and stock raising are essential to national safety and well-being. The history of all countries, at all times, indicates that the conditions which create a tenant class of agriculturists work increasing injury to the tillers of the soil. While increasing the price of the product to the consumer these conditions at the same time develop a class of large landowners who contribute little, if anything, to the welfare of the community, but who exact a continually increasing share of the wealth produced by the tenant. The private ownership of large tracts of usable land is not conducive to the best interests of a democratic people.

Legislation should be enacted placing a graduated tax upon all usable lands above the acreage which is cultivated by the owner. This should include provisions through which the tenant farmer, or others, may purchase land upon the lowest rate of interest and most favorable terms consistent with safety, and so safeguarded by governmental supervision and regulation as to give the fullest and freest opportunity for the development of land-owning agriculturists.

Special assistance should be given in the direction of allotments of lands and the establishment of homes on the public domain.

Establishment of government experimental farms, measures for stock-raising instruction, the irrigation of arid lands, and reclamation of swamp and cut-over lands should be undertaken upon a larger scale under direction of the federal government.

Municipalities and states should be empowered to acquire lands for cultivation or the erection of residential buildings which they may use or dispose of under equitable terms.

#### FEDERAL AND STATE REGULATION OF CORPORATIONS

The creation by legislative enactment of corporations, without sufficient definition of the powers and scope of activities conferred upon them and without provisions for their adequate supervision, regulation, and control by the creative body, has led to the development of far-reaching abuses which have seriously affected commerce, industry, and the masses of the people through their influence upon social, industrial, commercial, and political development. Legislation is required which will so limit, define, and regulate the powers, privileges, and activities of corporations that their methods cannot become detrimental to the welfare of the people. It is, therefore, essential that legislation should provide for the federal licensing of all corporations organized for profit. Furthermore, federal supervision and control should include the increasing of capital stock and the incurring of bonded indebtedness, with the provision that the books of all corporations shall be open at all times to federal examiners.

#### FREEDOM OF EXPRESSION AND ASSOCIATION

The very life and perpetuity of free and democratic institutions are dependent upon freedom of speech, of the press, and of assemblage and association. We insist that all restrictions of freedom of speech, press, public assembly, association, and travel be completely removed, individuals and groups being responsible for their utterances. These fundamental rights must be set out with clearness and must not be denied or abridged in any manner.

#### WORKMEN'S COMPENSATION

Workmen's compensation laws should be amended to provide more adequately for those incapacitated by industrial accidents or occupational diseases. To assure that the insurance fund derived from commerce and industry will be paid in full to injured workers,

state insurance must supplant, and prohibit the existence of, employers' liability insurance operated for profit.

### IMMIGRATION

Americanization of those coming from foreign lands, as well as our standards of education and living, are vitally affected by the volume and character of the immigration.

It is essential that additional legislation regulating immigration should be enacted, based upon two fundamental propositions: namely, that the flow of immigration must not at any time exceed the nation's ability to assimilate and Americanize the foreigners coming to our shores, and that at no time shall immigration be permitted when there exists an abnormal degree of unemployment.

By reason of existing conditions we urge that immigration into the United States should be prohibited for a period of at least two years after peace has been declared.

### TAXATION

One of the nation's most valuable assets is the initiative, energetic, constructive, and inventive genius of its people. These qualities, when properly applied, should be fostered and protected instead of being hampered by legislation, for they constitute an invaluable element of progress and material development. Taxation should, therefore, rest as lightly as possible upon constructive enterprise. Taxation should provide for full contribution from wealth by a tax upon profits which will not discourage industrial or commercial enterprise. There should be provided a progressive increase in taxes upon incomes, inheritances, and upon land values of such a nature as to render it unprofitable to hold land without putting it to use, to afford a transition to greater economic equality, and to supply means of liquidating the national indebtedness growing out of the war.

### EDUCATION

It is impossible to estimate the influence of education upon the world's civilization. Education must not stifle thought and inquiry, but must awaken the mind concerning the application of natural laws and to a conception of independence and progress.



Education must not be for a few but for all our people. While there is an advanced form of public education in many states, there still remains a lack of adequate educational facilities in several states and communities. The welfare of the republic demands that public education should be elevated to the highest degree possible. The government should exercise advisory supervision over public education, and where necessary maintain adequate public education through subsidies without giving to the government power to hamper or interfere with the free development of public education by the several states. It is essential that our system of public education should offer the wage-earners' children the opportunity for the fullest possible development. To attain this end state colleges and universities should be developed.

It is also important that the industrial education which is being fostered and developed should have for its purpose not so much training for efficiency in industry as training for life in an industrial society. A full understanding must be had of those principles and activities that are the foundation of all productive efforts. Children should not only become familiar with tools and materials but they should also receive a thorough knowledge of the principles of human control, of force and matter underlying our industrial relations and sciences. The danger that certain commercial and industrial interests may dominate the character of education must be averted by insisting that the workers shall have equal representation on all boards of education or committees having control over vocational studies and training.

To elevate and advance the interests of the teaching profession and to promote popular and democratic education, the right of the teachers to organize and to affiliate with the movement of the organized workers must be recognized.

### PRIVATE EMPLOYMENT AGENCIES

Essentials in industry and commerce are employee and employer, labor and capital. No one questions the right of organized capital to supply capital to employers. No one should question the right of organized labor to furnish workers. Private employment agencies abridge this right of organized labor.

Where federal, state, and municipal employment agencies are maintained they should operate under the supervision of joint committees of trade-unionists and employers, equally represented.

Private employment agencies operated for profit should not be permitted to exist.

### HOUSING

Child life, the workers' physical condition, and public health demand that the wage-earner and his family shall be given a full opportunity to live under wholesome conditions. It is not only necessary that there shall be sanitary and appropriate houses to live in but that a sufficient number of dwellings shall be available to free the people from high rents and overcrowding.

The ownership of homes, free from the grasp of exploitive and speculative interests, will make for more efficient workers, more contented families, and better citizens. The government should, therefore, inaugurate a plan to build model homes and establish a system of credits whereby the workers may borrow money at a low rate of interest and under favorable terms to build their own homes. Credit should also be extended to voluntary non-profit-making housing and joint-tenancy associations. States and municipalities should be freed from the restrictions preventing their undertaking proper housing projects and should be permitted to engage in other necessary enterprises relating thereto. The erection and maintenance of dwellings where migratory workers may find lodging and nourishing food during periods of unemployment should be encouraged and supported by municipalities.

If need should arise to expend public funds to relieve unemployment, the building of wholesome houses would best serve the public interests.

### MILITARISM

The trade-union movement is unalterably and emphatically opposed to "militarism" or a large standing army. "Militarism" is a system fostered and developed by tyrants in the hope of supporting their arbitrary authority. It is utilized by those whose selfish ambitions for power and worldly glory lead them to invade and subdue other peoples and nations, to destroy their liberties, to

acquire their wealth, and to fasten the yoke of bondage upon them. The trade-union movement is convinced by the experience of mankind that "militarism" brutalizes those influenced by the spirit of the institution. The finer elements of humanity are strangled. Under "militarism" a deceptive patriotism is established in the peoples' minds, where men believe that there is nobility of spirit and heroism in dying for the glory of a dynasty or the maintenance of institutions which are inimical to human progress and democracy. "Militarism" is the application of arbitrary and irresponsible forces as opposed to reason and justice. Resistance to injustice and tyranny is that virile quality which has given purpose and effect to ennobling causes in all countries and at all times. The free institutions of our country and the liberties won by its founders would have been impossible had they been unwilling to take arms and if necessary die in the defense of their liberties. Only a people willing to maintain their rights and defend their liberties are guaranteed free institutions.

Conditions foreign to the institutions of our country have prevented the entire abolition of organized bodies of men trained to carry arms. A voluntary citizen soldiery supplies what would otherwise take its place, a large standing army. To the latter we are unalterably opposed as tending to establish the evils of "militarism." Large standing armies threaten the existence of civil liberty. The history of every nation demonstrates that as standing armies are enlarged the rule of democracy is lessened or extinguished. Our experience has been that even this citizen soldiery, the militia of our states, has given cause at times for grave apprehension. Their ranks have not always been free from undesirable elements, particularly the tools of corporations involved in industrial disputes. During industrial disputes the militia has at times been called upon to support the authority of those who through selfish interests desired to enforce martial law, while the courts were open and the civil authorities competent to maintain supremacy of civil law. We insist that the militia of our several states should be wholly organized and controlled by democratic principles, so that this voluntary force of soldiery may never be diverted from its true purpose and used to jeopardize or infringe upon the rights and liberties of our people. The right to bear arms is a fundamental principle of our government,

a principle accepted at all times by free people as essential to the maintenance of their liberties and institutions. We demand that this right shall remain inviolate.

### SOLDIERS AND SAILORS

Soldiers and sailors, those who entered the service in the nation's defense, are entitled to the generous reward of a grateful republic.

The necessities of war called upon millions of workmen to leave their positions in industry and commerce to defend, upon the battlefields, the nation's safety and its free institutions. These defenders are now returning. It is advisable that they should be discharged from military service at the earliest possible moment, that as civilians they may return to their respective homes and families and take up their peace-time pursuits. The nation stands morally obligated to assist them in securing employment.

Industry has undergone great changes due to the dislocation caused by war production and transportation. Further readjustments in industry and commerce must follow the rehabilitation of business under peaceful conditions. Many positions which our citizen soldiers and sailors filled previous to enlistment do not exist today.

It would be manifestly unjust for the government, after having removed the worker from his position in industry and placed him in military service, to discharge him from the army or navy without having made adequate provision to assist him in procuring employment and providing sustenance until employment has been secured. The returned citizen soldier or sailor should not be forced by the bitter urgent necessity of securing food and clothing to place himself at a disadvantage when seeking employment.

Upon their discharge, transportation and meals should be supplied to their places of residence. The monthly salary previously paid should be continued for a period not to exceed twelve months if employment is not secured within that period.

The federal and state employment bureaus should be directed to cooperate with trade-union agencies in securing employment for discharged soldiers and sailors. In assisting the discharged soldier and sailor to secure employment, government agencies should not

expect them to accept employment for less than the prevailing rate of wages being paid in the industry. Neither should any government agency request or require such discharged men to accept employment where a trade dispute exists or is threatened. Nor should the refusal on the part of any of these discharged soldiers or sailors to accept employment where trade disputes exist or are threatened, or when less than the prevailing wage rate is offered, deprive them of a continuance of their monthly pay.

Legislation also should be enacted which will give the nation's defenders the opportunity for easy and ready access to the land. Favorable inducements should be provided for them to enter agriculture and husbandry. The government should assume the responsibility for the allotment of such lands and supply the necessary capital for its development and cultivation, with such safeguards as will protect both the government and the discharged soldier and sailor.

### CONCLUSION

No element in our nation is more vitally concerned with the problems of making for a permanent peace between all nations than the working people. The opportunities now before us are without precedent. It is of paramount importance that labor shall be free and unhampered in shaping the principles and agencies affecting the wage-earners' condition of life and work.

By the light that has been given to it the American Federation of Labor has attracted to its fold over three millions of wage-earners, and its sphere of influence and helpfulness is growing by leaps and bounds. By having followed safe and sound fundamental principles and policies, founded on freedom, justice, and democracy, the American trade-union movement has achieved successes of an inestimable value to the masses of toilers of our country. By adhering to these principles and policies we can meet all problems of readjustment, however grave in importance and difficult of solution, with a feeling of assurance that our efforts will be rewarded by a still greater success than that achieved in the past.

Given the whole-hearted support of all men and women of labor, our organized labor movement with its constructive program, its love for freedom, justice, and democracy, will prove the most potent

factor in protecting, safeguarding, and promoting the general welfare of the great mass of our people during this trying period of reconstruction and all times thereafter.

The American Federation of Labor has attained its present position of dignity and splendid influence because of its adherence to one common cause and purpose ; that purpose is to protect the rights and interests of the masses of the workers and to secure for them a better and a brighter day. Let us therefore strive on and on to bring into our organizations the yet unorganized. Let us concentrate our efforts to organize all the forces of wage-earners. Let the nation hear the united demand from the laboring voice. Now is the time for the workers of America to come to the stand of their unions and to organize as thoroughly and completely and compactly as is possible. Let each worker bear in mind the words of Longfellow :

In the world's broad field of battle,  
In the bivouac of Life,  
Be not like dumb, driven cattle!  
Be a hero in the strife!

## PART V. THE LAW

### XXXVII

#### LIBERTY OF CONTRACT<sup>1</sup>

"THE right of a person to sell his labor," says Mr. Justice Harlan, "upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee. . . . In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract, which no government can legally justify in a free land."<sup>2</sup> With this positive declaration of a lawyer, the culmination of a line of decisions now nearly twenty-five years old,—a statement which a recent writer on the science of jurisprudence has deemed so fundamental as to deserve quotation and exposition at an unusual length as compared with his treatment of other points,<sup>3</sup>—let us compare the equally positive statement of a sociologist: "Much of the discussion about 'equal rights' is utterly hollow. All the ado made over the system of contract is surcharged with fallacy."<sup>4</sup>

To everyone acquainted at first hand with actual industrial conditions the latter statement goes without saying. Why, then, do courts persist in the fallacy? Why do so many of them force upon

<sup>1</sup>From *Yale Law Journal*, Vol. XVIII (1909), pp. 454-487.

<sup>2</sup>*Adair v. United States*, 208 U. S. 161, 175.

<sup>3</sup>Taylor, *Science of Jurisprudence*, pp. 538-542.

<sup>4</sup>Ward, *Applied Sociology*, p. 281. See Wright, *Practical Sociology*, 5th ed., p. 226; Seager, *Introduction to Economics*, 3d ed., sects. 234 ff., "For one who really understands the facts and forces involved, it is mere juggling with words and empty legal phrases"; Ely, *Economic Theory and Labor Legislation*, p. 18.

legislation an academic theory of equality in the face of practical conditions of inequality? Why do we find a great and learned court in 1908 taking the long step into the past of dealing with the relation between employer and employee in railway transportation as if the parties were individuals—as if they were farmers haggling over the sale of a horse?<sup>1</sup> Why is the legal conception of the relation of employer and employee so at variance with the common knowledge of mankind? The late President has told us that it is because individual judges project their personal, social, and economic views into the law. A great German publicist holds that it is because the party bent of judges has dictated decisions.<sup>2</sup> But when a doctrine is announced with equal vigor and held with equal tenacity by courts of Pennsylvania and of Arkansas, of New York and of California, of Illinois and of West Virginia, of Massachusetts and of Missouri, we may not dispose of it so readily. Surely the sources of such a doctrine must lie deeper. Let us inquire, then, what further and more potent causes may be discovered, how these causes have operated to bring about the present state of the law as to freedom of contract, what the present doctrine of the courts is upon that subject, and how far we may expect amelioration thereof in the near future.

It is significant that the subject, so far as the form it now takes is concerned, is a new one. The phrase "liberty of contract" is not to be found in Lieber's "Civil Liberty and Self-Government," published in 1853. It is not to be found in Professor Burgess's "Political Science and Constitutional Law," published in 1890. The first decision turning upon it was rendered in 1886.<sup>3</sup> The first extended discussion of the right of free contract as a fundamental natural right is in Spencer's "Justice,"<sup>4</sup> written in 1891. The eighteenth-century writers on natural law say nothing about it. Fichte's discussion of the natural basis of civil law is silent with respect to it.<sup>5</sup> Even Bentham says that the function of government is to create and confer upon individuals "rights of personal security, rights of protection for honor, rights of property, rights of receiving

<sup>1</sup> See Mr. Olney's paper, *American Law Review*, Vol. XLII, p. 164.

<sup>2</sup> Jellinek, *System der subjectiven öffentlichen Rechte*, p. 101, n. 1.

<sup>3</sup> *Godcharles v. Wigeman*, 113 Pa. St. 431.

<sup>4</sup> Spencer, *Justice*, chap. xv.

<sup>5</sup> *The Science of Rights* (translation), p. 95.



aid in case of need.”<sup>1</sup> Ahrens (1837) argues not natural liberty of contract but natural restraints on that liberty.<sup>2</sup> Grotius, indeed, at the very outset of the school of natural law, mentions liberty of contract as a natural right.<sup>3</sup> But his idea was not at all the one with which we are concerned here. He was insisting not on the unrestricted right to make promises but on the natural force of promises when made.<sup>4</sup> For the chief problem of the natural-law jurists was to square the practical with the ideal, to test all things by reason and to throw off empty forms. They warred against rules derived from antiquity that enforced contracts rather than promises. They argued that enforceability of promises should depend on a more reasonable basis than form or than the traditional categories of Roman law. Hence to Grotius, to Puffendorf,<sup>5</sup> to Burlamaqui,<sup>6</sup> the problem was the source of the binding power of a promise.<sup>7</sup> To the eighteenth-century jurist the all-important thing was that promises should be kept. Montesquieu’s description of the Troglodytes, who perished utterly because they willfully violated contracts,<sup>8</sup> expresses their feeling. That promises have in fact had to depend during the greater part of legal history much more upon individual honesty than upon positive law seemed to them at variance with the law of nature.<sup>9</sup> We see an echo of this discussion in the opinion of Chief Justice Marshall in *Sturges v. Crowninshield*.<sup>10</sup>

The idea that unlimited freedom of making promises was a natural right, came after enforcement of promises when made had become a matter of course. It began as a doctrine of political economy, as a phase of Adam Smith’s doctrine which we commonly call

<sup>1</sup>Theory of Legislation (Hildreth’s translation), p. 95.

<sup>2</sup>Cours de droit naturel, Bk. II, sect. 83.

<sup>3</sup>De Jure Belli et Pacis, Bk. III, chap. xi, sect. 4.

<sup>4</sup>“And again, no reason can be found why laws, which are, as it were, a common pact of the people, and are so called by Aristotle and Demosthenes, should be able to give obligatory force to pacts, which the will of a person, directed especially and by every means to obligating himself, may not do so, especially where the civil law offers no impediment [i.e. to performance]” (*ibid.* sect. 3).

<sup>5</sup>Law of Nature and Nations, Bk. III, chap. iv.

<sup>6</sup>Principles of Natural and Politic Law, Bk. II, Pt. IV, chap. x, sect. 4. See also the end of chap. vii, in Bk. I, Pt. I.

<sup>7</sup>Ahrens, Cours de droit naturel, 8th ed., Bk. II, sect. 238.

<sup>8</sup>Lettres persanes, Lettre XIV *et seq.*

<sup>9</sup>Maine, Ancient Law, Pollock’s ed., p. 325.

<sup>10</sup>4 Wheaton 122, 197.

*laissez faire*.<sup>1</sup> It was propounded as a utilitarian principle of politics and legislation by Mill.<sup>2</sup> Spencer deduced it from his formula of justice. In this way it became a chief article in the creed of those who sought to minimize the functions of the state that the most important of its functions was to enforce by law the obligations created by contract.<sup>3</sup> But we must remember that the task of the English individualists was to abolish a body of antiquated institutions that stood in the way of human progress. Freedom of contract was the best instrument at hand for the purpose. They adopted it as a means, and made it an end.<sup>4</sup> While this evolution of juristic and political thought was in progress the common law too had become thoroughly individualistic; partly from innate tendency, partly through theological influence, partly through the contests between the courts and the crown in the sixteenth and seventeenth centuries, and partly as a result of the course of thought in the eighteenth and nineteenth centuries. This bit of history may suggest the chief, although not all, of the causes of the phenomenon we are considering.

In my opinion, the causes to which we must attribute the course of American constitutional decisions upon liberty of contract are seven: (1) the currency in juristic thought of an individualist conception of justice which exaggerates the importance of property and of contract, exaggerates private right at the expense of public right, and is hostile to legislation, taking a minimum of lawmaking to be the ideal; (2) what I have ventured to call on another occasion a condition of mechanical jurisprudence—a condition of juristic thought and judicial action in which deduction from conceptions has produced a cloud of rules that obscures the principles from which they were drawn, in which conceptions are developed logically at the expense of practical results, and in which the artificiality characteristic of legal reasoning is exaggerated; (3) the survival of purely

<sup>1</sup> *Wealth of Nations*, Bk. IV, chap ix (Thorold Rogers' ed., Vol. II, pp. 272-273). Ricardo laid it down as a principle of political economy that legislation should not interfere with contracts (Works, McCulloch's ed., p. 57). See a discussion of the juristic bearings of these doctrines in Berolzheimer's "System der Rechts- und Wirtschaftsphilosophie," Bk. II, sect. 32.

<sup>2</sup> *Liberty*, chap. iv.

<sup>3</sup> Ritchie, *Natural Rights*, p. 227.

<sup>4</sup> See Dicey, *Law and Public Opinion in England*, pp. 148-150; Sidgwick, *Elements of Politics*, 2d ed., p. 83.

juristic notions of the state and of economics and politics as against the social conceptions of the present; (4) the training of judges and lawyers in eighteenth-century philosophy of law and the pretended contempt for philosophy in law that keeps the legal profession in the bonds of the philosophy of the past because it is to be found in law-sheep bindings; (5) the circumstance that natural law is the theory of our bills of rights, and the impossibility of applying such a theory except when all men are agreed in their moral and economic views and look to a single authority to fix them; (6) the circumstance that our earlier labor legislation came before the public was prepared for it, so that the courts largely voiced well-meant but unadvised protests of the old order against the new, at a time when the public at large was by no means committed to the new;<sup>1</sup> and (7), by no means least, the sharp line between law and fact in our legal system which requires constitutionality, as a legal question, to be tried by artificial criteria of general application and prevents effective judicial investigation or consideration of the situations of fact behind or bearing upon the statutes.

Four stages may be observed in the development of the juristic idea of justice. Understand me. I am not speaking of the ethical conception nor of the political conception, closely as they are related to and much as they may have determined the juristic idea. We say that the end of law is the administration of justice. What do we mean here by the term "justice"? What is it that courts and jurists have sought to accomplish in the adjustment of human relations in public tribunals? The primitive idea was simply to keep the peace. Justice, juristically, was a device to keep the peace. Whatever served to avert private vengeance and prevent private war was an instrument of justice. The Salic Law awarded twice the compensation to the vigorous and half-civilized Frank that it did to the effete and civilized Roman, because it required more to move the Frank to restrain his anger and withhold his vengeance.<sup>2</sup> But Greek philosophy and Roman law soon got beyond this conception and gave us in its place an idea of justice as a device to preserve the social *status quo*, to keep each man in his appointed groove and thus

<sup>1</sup>Professor Seager has made a similar suggestion (Introduction to Economics, 3d ed., p. 417).

<sup>2</sup>Salic Law, tit. XIV.

prevent friction with his fellows. Plato sets this out very clearly.<sup>1</sup> In his ideal state "every member of the community must be assigned to the class for which he proves himself best fitted. Thus a perfect harmony and unity will characterize both the state and every person in it."<sup>2</sup> The Stoic doctrine of conformity to universal reason came to much the same practical result.<sup>3</sup> To Aristotle rights existed only between those who were free and equal;<sup>4</sup> justice demanded a unanimity in which there would be no violation of mutual rights,<sup>5</sup> and law and right took "account in the first instance of relations of inequality, in which individuals are treated in proportion to their worth, and only secondarily of relations of equality."<sup>6</sup> Roman legal genius gave practical effect to this idea of justice by making it the province of the state to define and protect interests and powers of action which in the aggregate made up the legal personality of the individual.<sup>7</sup> The precepts of law, as laid down in the Institutes,—*honeste vivere, alienum non laedere, suum cuique tribuere*,—come to this. As Courcelle-Seneuil has put it, the Roman ideal was a stationary society, corrected from time to time by a reversion to the ancient type.<sup>8</sup> Roman natural law was simply an appeal to reason against formalism. The natural law of the Middle Ages and of the seventeenth century—an appeal to reason against authority—is a very different thing.

Appeal to reason against authority led to a new conception in philosophy, in theology, in politics, and ultimately in legal theory, as a result of which justice came to be regarded as a device to secure a maximum of individual self-assertion. The beginnings of this are in philosophy. As Lord Acton put it, "Not the devil, but St. Thomas Aquinas was the first Whig."<sup>9</sup> Teutonic individualism,

<sup>1</sup> Republic, Bk. III, p. 424.

<sup>2</sup> Dunning, *Political Theories, Ancient and Mediæval*, p. 28.

<sup>3</sup> *Ibid.* p. 105.

<sup>4</sup> Zeller, *Aristotle and the Earlier Peripatetics* (translated by Costelloe and Muirhead), Vol. II, p. 175.

<sup>5</sup> *Eth. Nicomach.* VIII, 1, 24.

<sup>6</sup> Zeller, *op. cit.* Vol. II, p. 197.

<sup>7</sup> This is well put in Willoughby, *Political Theories of the Ancient World*, p. 64.

<sup>8</sup> *Préparation à l'étude du droit*, pp. 99, 396. See Guyot, *Principles of Social Economy* (Leppington's translation, 2d ed.), p. 299.

<sup>9</sup> Figgis, *From Gerson to Grotius*, p. 7.

kept back by Roman authority in religion and law, broke over. Puritan theology gave rise to ultraindividualism in church polity and religion. The appeal to reason against the crown developed political doctrines of civil liberty and natural rights of the individual. And as Coke, the great light of our legal system, was in the forefront of the controversy with the crown and read all legal history in the light of the exigencies of that controversy,<sup>1</sup> the liberties of the individual Englishman came to assume a central point in that system that would have been taken by public good and the powers of the state if Bacon rather than Coke had been the inspiration of eighteenth-century commentators and nineteenth-century courts. Moreover, our constitutional models and our bills of rights were drawn in the period in which the natural-law school of jurists was at its zenith, and the growing period of American law coincided with the high tide of individualistic ethics and economics. Hence his school course in political economy and his office reading of Blackstone taught the nineteenth-century judge the same things as fundamentals.<sup>2</sup> He became persuaded that they were the basis of the jural order, and, as often happens, the individualist conception of justice reached its complete logical development after the doctrine itself had lost its vitality. Social justice, the last conception to develop, had already begun to affect not merely legal thought but

<sup>1</sup> Compare his interpretation of Tregor's Case (V. B. 8 E. 3, 30) and the case in Fitzh. Abr. Cessavit, 42, in Bonham's Case, 8 Rep. 108a, 118a, with the cases themselves.

<sup>2</sup> "Like all other contracts, wages should be left to the fair and free competition of the market, and should never be controlled by the interference of the legislature" (Ricardo, Principles of Political Economy, chap. v, sect. 7). Chap. xi of Bk. V of Mill's "Political Economy," entitled "Of the Grounds and Limits of the *Laissez-faire* or Non-Interference Principle," was studied by every liberally educated lawyer of the last fifty years. Mill (*ibid.* sect. 12) disapproves of, but at the same time suggests an argument in favor of, legislation limiting the hours of labor. In Laughlin's edition (1884) the editor argues against such legislation (p. 193). We are now prepared to read in the opinion of O'Brien, J., in *People v. Coler*, 166 N. Y. 1, that "A law that restricts the freedom of contract on the part of both the master and servant cannot in the end operate to the benefit of either" (p. 16). Also: "It was once a political maxim that the government governs best which governs the least. It is possible that we have now outgrown it, but it was an idea that was always present to the minds of the men who framed the Constitution, and it is proper for the courts to bear it in mind when expounding that instrument." (p. 14).

legislation and judicial decision while the courts were working out the last extreme deductions from the older conceptions.<sup>1</sup>

M. Worms, taking no account of the first stage above suggested, has summed up the other three in these words: "To sum up, justice has tried to organize society to the profit of force, later independently of force, and it dreams today of organizing it against force."<sup>2</sup> But our ideal of justice has been to let every force play freely and exert itself completely, limited only by the necessity of avoiding friction. As a result, and as a result of our legal history, we exaggerate the importance of property, and of contract as an incident thereof. A leader of the bar, opposing the income tax, argues that a fundamental object of our polity is "preservation of the rights of private property."<sup>3</sup> Text writers tell us of the divine origin of property.<sup>4</sup> The Supreme Court of Wisconsin tells us that the right to take property by will is an absolute and inherent right, not depending upon legislation.<sup>5</sup> The absolute certainty which is one of our legal ideals, an ideal responsible for much that is irritatingly mechanical in our legal system, is demanded chiefly to protect property.<sup>6</sup> And our courts regard the right to contract, not as a phase of liberty—a sort of freedom of mental motion and locomotion—but as a phase of property, to be protected as such.<sup>7</sup> A further result is to exaggerate private right at the expense of public interest. Blackstone's proposition that "the public good is in nothing more essentially interested than in the protection of every individual's private rights"<sup>8</sup> has been quoted in more than one American

<sup>1</sup>See my paper "The Need of a Sociological Jurisprudence," *Green Bag*, Vol. XIX, p. 607.

<sup>2</sup>Philosophie des sciences sociales, Vol. II, p. 222.

<sup>3</sup>Argument of Mr. Choate in the Income Tax cases, 157 U.S. 429, 534.

<sup>4</sup>Smith, Personal Property, sect. 33. Berolzheimer sums up the characteristic features of common-law legal speculation thus: "Unlimited high valuation of individual freedom and respect for individual property" (*System der Rechts- und Wirtschaftsphilosophie*, II, 160).

<sup>5</sup>*Nunnemacher v. State*, 108 N.W. 627.

<sup>6</sup>See my paper "Enforcement of Law," *Green Bag*, Vol. XX, pp. 401, 408.

<sup>7</sup>Occasionally it is said to be "both a liberty and a property right" (*Froerer v. People*, 141 Ill. 171, 181). Professor Seager suggests another reason for American exaggeration of the importance of property (*Introduction to Economics*, 3d ed., p. 21). He points out that this exaggeration has resulted in "an industrial civilization which has been marked thus far by intense individualism in thought and practice."

<sup>8</sup>1 Comm. p. 139.

decision;<sup>1</sup> and one of these is a case often cited in support of extreme doctrines of liberty of contract.<sup>2</sup> It is but a corollary that liberty of contract cannot be restricted merely in the interest of a contracting party. His right to contract freely is to yield only to the safety, health, or moral welfare of the public.<sup>3</sup> Still another result is that bench and bar distrust and object to legislation. I have discussed the history and the causes of this attitude toward legislation on another occasion.<sup>4</sup> Suffice it to say here that the doctrine as to liberty of contract is bound up in the decisions of our courts with a narrow view of what constitutes special or class legislation that greatly limits effective lawmaking. If we can have only laws of wide generality of application, we can have only a few laws; for the wider their application, the more likelihood there is of injustice in concrete cases. But from the individualist standpoint a minimum of law is desirable. The common-law antipathy to legislation sympathizes with this, and in consequence we find courts saying that it is not necessary to consider the reasons that led up to the type of legislation they condemn<sup>5</sup> and that the maxim that the government governs best which governs least is proper for courts to bear in mind in expounding the Constitution.<sup>6</sup>

The second cause, a condition of mechanical jurisprudence, I have discussed in its relation to the legal system generally in another place.<sup>7</sup> The effect of all system is apt to be petrification of the subject systematized. Legal science is not exempt from this tendency. Legal systems have their periods in which system decays into technicality, in which a scientific jurisprudence becomes a mechanical jurisprudence. In a period of growth through juristic speculation and judicial decision there is little danger of this. But whenever such a period has come to an end, when its work has been done and its

<sup>1</sup> See, for example, *Wynhamer v. People*, 13 N. Y. 378, 387; *Chase v. Beal*, 31 Mich. 491.

<sup>2</sup> *Wynhamer v. People*, *supra*.

<sup>3</sup> *People v. Marcus*, 128 N. Y. 257; *In re House Bill 203*, 21 Col. 27.

<sup>4</sup> "Common Law and Legislation," *Harvard Law Review*, Vol. XXI, p. 383.

<sup>5</sup> "For some reason, *not necessary to consider*, there has in modern times arisen a sentiment favorable to paternalism in matters of legislation" (*Lowe v. Rees Printing Co.*, 41 Neb. 127, 135). Cf. *State v. Kreutzberg*, 114 Wis. 530, 537.

<sup>6</sup> *People v. Coler*, 166 N. Y. 1, 14.

<sup>7</sup> "Mechanical Jurisprudence," *Columbia Law Review*, Vol. VIII, p. 605.

legal theories have come to maturity, jurisprudence tends to decay. Conceptions are fixed. The premises are no longer to be examined. Everything is reduced to simple deduction from them. Principles cease to have importance. The law becomes a body of rules. This is the condition Professor Henderson refers to when he speaks of the way of social progress as barred by barricades of dead precedents.<sup>1</sup> Manifestations of mechanical jurisprudence are conspicuous in the decisions as to liberty of contract. A characteristic one is the rigorous logical deduction from predetermined conceptions, in disregard of and often in the teeth of the actual facts, which was noted at the outset. Two courts, in passing on statutes abridging the power of free contract, have noted the frequency of such legislation in recent times but have said that it was not necessary to consider the reasons for it.<sup>2</sup> Another court has asked what right the legislature has to "assume that one class has the need of protection against another."<sup>3</sup> Another has said that the remedy for the company-store evil "is in the hands of the employee," since he is not compelled to buy from the employer,<sup>4</sup> forgetting that there may be a compulsion in fact where there is none in law. Another says that "theoretically there is among our citizens no inferior class,"<sup>5</sup> and of course no facts can avail against that theory. Another tells us that man and woman have the same rights, and hence a woman must be allowed to contract to work as many hours a day as a man may.<sup>6</sup> We have already noted how Mr. Justice Harlan insists on a legal theory of equality of rights in the latest pronouncement of the federal Supreme Court. Legislation designed to give laborers some measure of practical independence, which, if allowed to operate,

<sup>1</sup>*American Journal of Sociology*, Vol. XI, p. 847.

<sup>2</sup>See cases in note 5 on the preceding page.

<sup>3</sup>*State v. Haun*, 61 Kan. 146, 162.

<sup>4</sup>*State v. Fire Creek Coal & Coke Co.*, 33 W. Va. 188, 190. Those who have studied the actual situation do not look at it in this way. "He is not free to make such a contract as might please him because, like every party to a contract, he must come to such conditions as can possibly be agreed upon. He is less free than the parties to most contracts, and, further, he cannot utilize his labor in many directions; he must contract for it within restricted lines" (Wright, *Practical Sociology*, 5th ed., p. 226).

<sup>5</sup>*Froerer v. People*, 141 Ill. 171, 186, holding against a statute prohibiting company stores and requiring miners to be paid weekly.

<sup>6</sup>*Ritchie v. People*, 155 Ill. 99, 111.



would put them in a position of reasonable equality with their masters, is said by courts, because it infringes on a theoretical equality, to be insulting to their manhood<sup>1</sup> and degrading,<sup>2</sup> to put them under guardianship,<sup>3</sup> to create a class of statutory laborers,<sup>4</sup> and to stamp them as imbeciles.<sup>5</sup> I know of nothing akin to this artificial reasoning in jurisprudence unless it be the explanation given by Pomponius for the transfer of legislative power from the Roman people during the Empire: "The *plebs* found, in course of time, that it was difficult for them to meet together, and the general body of the citizens no doubt found it more difficult still."<sup>6</sup> No doubt they did. Cæsar or the prætorian prefect would have seen to that.

Survival of a purely juristic notion of the state and of economics and politics in contrast with the social conception of the present, the third cause suggested, can be looked at but briefly. Formerly the juristic attitude obtained in religion, in morals, and in politics as well as in law. This fundamentally juristic conception of the world—due possibly to Roman law being the first subject of study in the universities, which gave a form of legality even to theology—has passed away elsewhere. But it lingers in the courts. Jurisprudence is the last in the march of the sciences away from the method of deduction from predetermined conceptions. The sociological movement in jurisprudence, the movement for pragmatism as a philosophy of law, the movement for the adjustment of principles and doctrines to the human conditions they are to govern rather than

<sup>1</sup> *Godcharles v. Wigeman*, 113 Pa. St. 431, 437 (wages in iron mills to be paid in money).

<sup>2</sup> *State v. Goodwill*, 33 W. Va. 179, 186 (store orders).

<sup>3</sup> *Braceville Coal Co. v. People*, 147 Ill. 66, 74 (coal to be weighed for fixing wages); *State v. Haun*, 61 Kan. 146, 162 (wages to be paid in money).

<sup>4</sup> *People v. Beck*, 10 Misc. 77 (dissenting opinion of White, J.). The statute fixed hours of labor on municipal contracts.

<sup>5</sup> *State v. Goodwill*, *supra*; *Frerer v. People*, 141 Ill. 171, 187 (company stores).

<sup>6</sup> Dig. I, 2, 2, sect. 9. Professor Seager says of these objections: "The opposition to such regulations . . . is based on the fear that they may serve to undermine the spirit of independence of the protected persons. Experience seems to indicate that they have in fact a directly contrary effect" (Introduction to Economics, 3d ed., p. 421). See also p. 423: "Those who advance it fail to consider that deadening and monotonous toil too long continued is much more inimical to the spirit of independence than any amount of legislation."

to assumed first principles, the movement for putting the human factor in the central place and relegating logic to its true position as an instrument, has scarcely shown itself as yet in America. Perhaps the dissenting opinion of Mr. Justice Holmes in *Lochner v. New York*<sup>1</sup> is the best exposition of it we have.

Another factor of no mean importance, in producing the line of decisions we are considering is the training of lawyers and judges in eighteenth-century theories of natural law. In a book just published by a well-known writer on legal subjects, who has also been a teacher of law, the whole basis of discussion is natural law. The learned author does not indicate a suspicion that any doubt has been cast upon or may attach to his philosophical premises.<sup>2</sup> In another book, published last year by a well-known practitioner, it is recommended gravely that one subject of required study in preparation for the bar be "natural and civil law, and the principles, foundation, and spirit of law," and the student is expected to learn these from Grotius, Paley's "Moral and Political Philosophy," Burlamaqui's "Natural Law," Puffendorf, and MacIntosh's "Discourses on the Study of the Law of Nature and Nations."<sup>3</sup> Until a comparatively recent date all legal education, whether in school or in office, began with the study of Blackstone. Probably all serious office study begins with Blackstone or some American imitator. Many schools make Blackstone the first subject of instruction today, and in others Blackstone is a subject of examination for admission or of prescribed reading after admission, or there are courses on elementary law in which texts reproducing the theories of the introduction to and the first book of the "Commentaries" are the basis of instruction. A student who is college trained may have had a course or courses that brought him in contact with modern thought. It is quite as likely he has not, or if he has, the natural-law theories which are a matter of course in all our law books are not unlikely to persuade him that what he learned in college is immaterial in the domain of law.<sup>4</sup> Constitutional law is full of natural-law

<sup>1</sup> 198 U. S. 45, 75. But see also Holmes, "The Path of the Law," *Harvard Law Review*, Vol. X, pp. 457, 467, 472.

<sup>2</sup> Schouler, *Ideals of the Republic*. 1808.

<sup>3</sup> Dos Passos, *The American Lawyer*, p. 108. 1907.

<sup>4</sup> Cf. the review of Schouler's "Ideals of the Republic," *Harvard Law Review*, Vol. XXII, p. 317.

notions. For one thing, there is the doctrine that apart from constitutional restrictions there are individual rights resting on a natural basis, to which courts must give effect, "beyond the control of the state."<sup>1</sup> In the judicial discussions of liberty of contract this idea has been very prominent. The Supreme Court of Massachusetts, in passing on legislation directed against fines in cotton mills, tells us that a statute which violates "fundamental" rights "is unconstitutional and void, even though the enactment of it is not expressly forbidden."<sup>2</sup> Another court reminds us that natural persons do not derive their right to contract from the law.<sup>3</sup> Another court, in passing adversely upon legislation against company stores, says any classification is arbitrary and unconstitutional unless it proceeds on "the natural capacity of persons to contract."<sup>4</sup> Another, in passing on a similar statute, denies that contractual capacity can be restricted, except for physical or mental disabilities.<sup>5</sup> Another holds that the legislature cannot take notice of the *de facto* subjection of one class of persons to another in making contracts of employment in certain industries, but must be governed by the theoretical, jural equality.<sup>6</sup> These natural-law ideas are carried to an extreme by the Supreme Court of Illinois in *Ritchie v. People*,<sup>7</sup> in which case it is announced that women have a natural equality with men and that no distinction may be drawn between them with respect to power of engaging to labor.

Closely related to the ideas just considered, and, indeed, a product of the same training, is a deep-seated conviction of the American lawyer that the doctrines of the common law are part of the universal jural order. Just as, in nine cases out of ten, natural law meant

<sup>1</sup> Harlan, J., in *Railway Co. v. Chicago*, 206 U.S. 226, 237 (saying that compensation for property taken for a public use is a "settled principle of universal law reaching back of all constitutional provisions"); Field, J., in *Butchers' Union etc. Co. v. Crescent City etc. Co.*, 111 U.S. 746, 762 ("When such [police] regulations do not conflict with any constitutional inhibition or natural right, their validity cannot be successfully controverted"); Miller, J., in *Loan Association v. Topeka*, 20 Wall 655, 662; Marshall, C. J., in *Fletcher v. Peck*, 6 Cranch. 87; Iredell, J., in *Calder v. Bull*, 3 Dall. 386.

<sup>2</sup> *Com. v. Perry*, 155 Mass. 117 (1891).

<sup>3</sup> *Leep v. Railway Co.*, 58 Ark. 407, 427.

<sup>4</sup> *State v. Loomis*, 115 Mo. 307, 315.

<sup>5</sup> *State v. Fire Creek Coal & Coke Co.*, 33 W. Va. 188.

<sup>6</sup> *State v. Haun*, 61 Kan. 140, 162.

<sup>7</sup> 155 Ill. 99.

for the seventeenth-century and eighteenth-century jurist the Roman law which he knew and had studied, for the common-law lawyer it means the common law.<sup>1</sup> For one thing, this feeling leads to a narrow attitude toward legislation—a tendency to hold down all statutory innovations upon the common law as far as possible.<sup>2</sup> In like spirit, on this subject of liberty of contract, most of the courts which have overthrown legislation as being in derogation of liberty have insisted that only common-law incapacities can be given legal recognition;<sup>3</sup> that new incapacities in fact, growing out of new conditions in business and industry, cannot be taken advantage of in legislation; that the ordinary farm hand and the laborer in the beet fields, for example, must be treated alike. But, even more important for our purpose, this feeling operates in constitutional law to lead judges to try statutes by the measure of common-law doctrines rather than by the Constitution.<sup>4</sup>

<sup>1</sup>The classical instance of this is *Cutting's Case* (Snow, *Cases on International Law*, p. 172). See also Marcy's confusion of the rules as to citizenship in the several states of the United States with the rules of International Law as to national character (Cockburn, *Nationality*, p. 118 *et seq.*).

<sup>2</sup>See, for some examples of this, my paper "Common Law and Legislation," *Harvard Law Review*, Vol. XXI, p. 383. Another example is to be seen in the judicial restrictions on the applications of Lord Campbell's Act (*Deni v. Pennsylvania Co.*, 181 Pa. St. 527; *Brannigan v. Union Min. Co.*, 93 Fed. 164; *McMillan v. Spider Lake etc. Co.*, 115 Wis. 332; *Roberts v. Great Northern R. Co.*, 161 Fed. Rep. 239). The spirit of the courts in these cases is well illustrated by the following remark of the Supreme Court of Pennsylvania: "We must remember that the injury complained of is due to the negligence of a fellow workman, for which the master is responsible neither in law nor morals" (*Durkin v. Coal Co.*, 171 Pa. St. 193, 202). Cf. Best, C. J., in *Fairlee v. Herring*, 3 Bing. 625, 630: "I am happy to find in this case that which I find in most others, where statutes have not interfered, that the common law will enable us to do justice."

<sup>3</sup>*State v. Goodwill*, 33 W. Va. 179; *State v. Fire Creek Coal & Coke Co.*, 33 W. Va. 188, 190; *Frorer v. People*, 141 Ill. 171, 186; *State v. Loomis*, 115 Mo. 307, 315. In *State v. Loomis* the Court speaks of the common-law incapacities as "natural incapacities." But these cases all distinguish usury laws, because such legislation has come to be part of our American common law.

<sup>4</sup>Cf. the attempt of the Supreme Court of Pennsylvania to read contributory negligence into the Federal Safety Appliances Act (*Schlemmer v. Buffalo R. & P. R. Co.*, 205 U.S. 1). But the most remarkable example is to be seen in *Grossman v. Caminez*, 79 App. Div. (N. Y.) 15, in which one of the judges, regarding the Statute of Frauds as part of the legal order of nature, said of a statute which required agents attempting to sell city lots to have written authority: "It is a denial . . . of a right or privilege, guaranteed to citizens, to make verbal contracts which are to be performed within a year."

Not only, however, is natural law the fundamental assumption of our elementary books and of professional philosophy, but we must not forget that it is the theory of our bills of rights. Not unnaturally, therefore, courts have clung to it as being the orthodox theory of our constitutions. But the fact that the framers held that theory by no means demonstrates that they intended to impose the theory upon us for all time. It is contrary to their principles to assume that they intended to dictate philosophical or juristic beliefs and opinions to those who were to come after them. What they did intend was the *practical* securing of each individual against arbitrary and capricious governmental acts. They intended to protect the people against their rulers, not against themselves. They laid down principles, not rules, and rules can only be illustrations of those principles so long as facts and opinions remain what they were when the rules were announced. For instance: The cases agree that the term "liberty" is broader than Coke's use of it; that the fact that Coke confined it to freedom of physical motion and locomotion does not exclude a broader interpretation today. Yet the same courts that recognize that "liberty" must include more today than it did as used in Coke's "Second Institute" lay it down that incapacities are to remain what they were at common law; that new incapacities of fact, arising out of present industrial situations, may not be recognized by legislation.<sup>1</sup> This is, in truth, but another illustration of the purely personal character of all natural-law theories.<sup>2</sup>

<sup>1</sup>*Fraser v. People*, 141 Ill. 171, 181, 185-187; *Ritchie v. People*, 155 Ill. 99, 111; *Harding v. People*, 160 Ill. 459, 467; *State v. Haun*, 61 Kan. 146, 162. Cf. *People v. Marx*, 99 N.Y. 377.

<sup>2</sup>See some illustrations in my paper "Common Law and Legislation," *Harvard Law Review*, Vol. XXI, pp. 383, 392-393. See also the statement of Curtis, J., in *Scott v. Sanford*, that "all writers" agree that slavery "is created only by municipal law" (19 How. 393, 626). But Aristotle (*Politics*, Bk. I, chap. v), Grotius (II, 5, 27, sect. 2 and 29, sect. 2) and Rutherford (*Natural Law*, Bk. I, chap. xx, sect. 4), who are not insignificant authorities, argue that slavery has a natural basis in some cases, beyond and apart from law. Again, in *Wynhamer v. People*, 13 N.Y. 378, 454, Hubbard, J., said: "Liquor is not a nuisance *per se*, nor can it be made so by a simple legislative declaration." Since that time people have changed their minds, and we find another judge saying: "The entire scheme of prohibition as embodied in the Constitution and laws of Kansas might fail if the right of each citizen to manufacture intoxicating liquors for his own use or as a beverage were recognized. *Such a right does not inhere in citizenship*" (Harlan, J., in *Mugler v. Kansas*, 123 U.S. 623).

Last of the causes suggested, but by no means the least efficient in bringing about the line of decisions under consideration, is the sharp line between law and fact in our legal system, due originally to the exigencies of trial by jury. The line between what is for the court to pass upon and what is for the jury has come to be called a line between law and fact. For purposes of jury trial the line itself has to be drawn often very artificially. But, beyond that, when it is drawn, the tendency is to assume that questions which analytically are pure questions of fact, when they become questions for the court to decide must be looked at in a different way from ordinary questions of fact and must be dealt with in an academic and artificial manner because they have become questions of law. The tendency to insist upon such a line, and to draw it arbitrarily, has spread from the law of trials to every part of the law. One example is to be seen in decisions as to what is a reasonable time in the law of negotiable instruments. Another may be seen in judicial pronouncements as to negligence, which are leading so many of our state legislatures to turn the whole matter over to juries in cases of personal injury. Still another may be seen in the refinements as to constructive fraud and badges of fraud, which led to widespread legislation making fraud a question for the jury. It is one of the chief factors in producing what I have ventured to call mechanical jurisprudence in our legal system. In constitutional law the necessity for drawing this line, and the assumption that whatever is left to the court to decide must be dealt with artificially and disposed of mechanically, operates to the disadvantage of new types of legislation. It is felt that a law cannot be constitutional now if it would have been unconstitutional one hundred years ago. *In fact* it might have been an unreasonable deprivation of liberty as things were even fifty years ago and yet be a reasonable regulation as things are now. But the question is not one of fact. Being for the court to decide, it must be decided upon some universal proposition, valid in all places and at all times.<sup>1</sup> Rate laws, in the investigation

<sup>1</sup>Hence, when a court had to decide whether the common-law doctrine of riparian rights was applicable to and hence in force in a state where one part was arid, so that the doctrine could not be applied, another part had abundant rainfall, so that the doctrine was well suited thereto, and still another sometimes had rain and sometimes not, it could not say the rule applies here and does not

of which it may prove that a rate is confiscatory at one time and not at another, are compelling courts to recognize that the constitutionality of a statute may depend upon a pure question of fact, to be investigated and determined as such. Hence they are likely to induce a change of judicial attitude toward other legislation, the reasonableness of which must depend upon questions of fact, which only those who have investigated special industrial situations can fairly determine. As it is, in the ordinary case involving constitutionality the court has no machinery for getting at the facts. It must decide on the basis of matters of general knowledge and on accepted principles of uniform application. It cannot have the advantage of legislative reference bureaus, of hearings before committees, of the testimony of specialists who have conducted detailed investigations, as the legislature can and does. The court is driven to deal with the problem artificially or not at all, unless it is willing to assume that the legislature did its duty and to keep its hands off on that ground. More than anything else, ignorance of the actual situations of fact for which legislation was provided and supposed lack of legal warrant for knowing them have been responsible for the judicial overthrowing of so much social legislation.

Turning now to the actual state of the decisions, let us look first at the cases in which the idea of liberty of contract has been invoked to defeat legislation. The fountainhead of this line of decisions seems to be the opinion of Mr. Justice Field in *Butchers' Union Co. v. Crescent City Co.*,<sup>1</sup> in which he restates the views of the minority in the *Slaughter House Cases*.<sup>2</sup> This opinion has been one of the staple citations in causes involving liberty of contract.<sup>3</sup> In it he took a vigorous stand against legislative interference with the "right to follow lawful callings." Although it did not represent the views of the federal Supreme Court, this opinion had a far-reaching

apply there, depending on the facts, but had to insist upon one rule for the whole state (*Meng v. Coffey*, 67 Neb. 500).

<sup>1</sup> 111 U.S. 746, 762.

<sup>2</sup> 16 Wall, 36.

<sup>3</sup> Cited and relied on particularly in *State v. Goodwill*, 33 W. Va. 179, 183, and through this case and the New York cases in nearly all the later decisions. It is interesting to note that the Supreme Court of Illinois, at least, has fallen into a settled practice of citing the opinion of the minority in the *Slaughter House Cases* as if it were that of the Court.

influence in the state courts. It produced a reactionary line of decisions in New York on liberty to pursue one's calling,<sup>1</sup> and through these cases its echoes are still ringing in the books. Mr. Justice Field was eminently the man to lead this belated individualist crusade. In him a Puritan ancestry and a Puritan bringing up<sup>2</sup> were followed by a professional career upon the frontier in the time and at the place where the individual counted for more and the state-imposed law for less than at any other period in our history. Thus predisposed, his thorough study and minute knowledge of the common-law authorities could not fail to make him a prophet of common-law individualism. How zealously he performed his prophetic calling the vogue today of his dissenting opinion of thirty-five years ago, uttered to another generation and in view of a distinct industrial situation, bears abundant witness. But the line of decisions culminating in the *Adair Case* begins directly with a dictum of the Supreme Court of Illinois, a court which has since attained a bad eminence in this connection, to the effect that legislation providing how coal should be weighed in fixing the compensation of miners was an undue interference with liberty of contract.<sup>3</sup> Two years later two cases were decided upon the express point. The pioneer, and, so far as influence upon the later decisions is concerned, the leading case, is *Godcharles v. Wigeman*,<sup>4</sup> in which, in an offhand and positive pronouncement, without discussion or citation, the Court declared that a statute requiring payment in money of wages in iron mills was "degrading and insulting" to the laborer and "subversive of his rights as a citizen." It said: "An attempt has been made by the legislature to do what cannot be done; that is, prevent persons who are *sui juris* from making their own contracts." In other words, it assumed that incapacities not known to the common law could not be recognized by the legislature, and ignored the palpable fact that courts of chancery had wielded a not inconsiderable power of interference with freedom of contract. In the

<sup>1</sup> *Matter of Jacobs*, 98 N. Y. 98; *People v. Marx*, 99 N. Y. 377.

<sup>2</sup> See H. M. Field, *Life of David Dudley Field*, chaps. i and ii.

<sup>3</sup> *Jones v. People*, 110 Ill. 590 (1884). Sheldon, J., said: "We do not regard this as requiring that in all contracts for the mining of coal the wages of the miners must be computed upon the basis of the weight of the coal mined. That would be a quite arbitrary provision and seemingly an undue interference with men's rights of making contracts."

<sup>4</sup> 113 Pa. St. 427 (1886).



same year the Supreme Court of Illinois passed expressly upon the subject of its dictum of two years before. The case of *Millet v. People*<sup>1</sup> turned chiefly upon the point that the statute was restricted to certain employers and was not applicable to employers generally. But the Court (Scholfield, J.) said:

What is there in the condition or situation of the laborer in the mine to disqualify him from contracting in regard to the price of his labor or in regard to the mode of ascertaining the price? And why should the owner of the mine not be allowed to contract in respect to such matters as to which all other property owners and agents may contract?

The Court assumes that this question answers itself. It does not conceive any examination necessary in order to ascertain whether there is not *in fact* a difference. It does not consider that laborers in mines may be in a continual condition of poverty, and that, as Lord Northington put it, "Necessitous men are not, truly speaking, free men, but, to answer a present exigency, will submit to any terms that the crafty may impose upon them."<sup>2</sup>

*Godcharles v. Wigeman* and *Millet v. People* soon obtained a considerable following. They were cited three years later in *State v. Goodwill*,<sup>3</sup> holding unconstitutional a statute against payment of wages in mines and factories in store orders, and *State v. Fire Creek Coal and Coke Co.*,<sup>4</sup> deciding against legislation prohibiting mine and factory owners from selling merchandise to their laborers at a greater profit than when selling to others. The former case is especially interesting because of its argument that no new forms of incapacity to contract can be recognized by the legislature. Speaking of usury legislation, the Court says:

The right to regulate the rate of interest *existed at the time the Constitution was adopted*, and cannot, therefore, be considered as either an abridgment or restraint upon the rights of the citizen guaranteed by the Constitution. *The power to pass usury laws exists by immemorial usage; but such is not the case with such acts as we are now considering.*

In the decade 1890-1899 the current of decisions following *Godcharles v. Wigeman* flowed fast. In 1890, in *Ex Parte Kuback*,<sup>5</sup>

<sup>1</sup> 117 Ill. 294.

<sup>2</sup> *Vernon v. Bethell*, 2 Eden, 110, 113.

<sup>3</sup> 33 W. Va. 179 (1889).

<sup>4</sup> 33 W. Va. 188 (1889).

<sup>5</sup> 85 Cal. 274.

the Supreme Court of California held adversely to a municipal ordinance prescribing eight hours as a day's work on public works, on the ground that it was an infringement of the right of persons "to make and enforce their contracts." That the municipality might have some right to dictate the terms of its own contracts seems not to have been considered. The following year the Supreme Court of Massachusetts held adversely to a statute prohibiting the imposition of fines in cotton mills.<sup>1</sup> The Court cited *Godcharles v. Wigeman*, *Millet v. People*, and *State v. Goodwill*; also the New York cases as to the right to pursue one's calling. It said that the statute was "an interference with the right to make *reasonable and proper* contracts in conducting a legitimate business." But are the contracts forbidden "reasonable and proper"? The legislature thought they were not. To the Court the contrary seemed a matter of course. It was assumed to be a matter of law. Viewed as one of fact, the question assumes a very different aspect. It is interesting to observe that Mr. Justice Holmes dissented. The Supreme Court of Illinois followed with three decisions. In *Frorer v. People*<sup>2</sup> the statute was directed against company stores and required employees to be paid weekly. This was held invalid, citing the New York cases above referred to, *Godcharles v. Wigeman*, the West Virginia cases, *Ex Parte Kuback*, and *Com. v. Perry*. Its position is that the statute interferes with the absolute right to make what contracts one chooses. But the Court recognizes that usury laws also might be thought to contravene this right, and it attempts to distinguish them thus:

Usury laws proceed upon the theory that the lender and the borrower of money do not occupy toward each other the same relations of equality that parties do in contracting with each other in regard to the loan or sale of other kinds of property, and that *the borrower's necessities deprive him of freedom in contracting and place him at the mercy of the lender* and such laws may be found on the statute books of all civilized nations of the world, both ancient and modern.

It does not seem to have occurred to Mr. Justice Scholfield that the necessities of a miner or factory employee might impair his freedom of contract or put him at the mercy of his employers in the

<sup>1</sup> *Com. v. Perry*, 155 Mass. 117 (1891).

<sup>2</sup> 141 Ill. 171 (1892).

same way, nor that labor legislation was enacted or enacting in all modern civilized countries, nor that England, which might be supposed to be a modern civilized country, had abrogated her legislation against usury.<sup>1</sup>

In *Ramsey v. People*<sup>2</sup> the same court had before it a statute requiring mine operators to weigh coal on pit cars before it was screened and to compute the pay of the miners on the basis of the weight of the unscreened coal. In holding the law unconstitutional the Court (per Bailey, J.) said :

[The statute] attempts to take from both employer and employee engaged in the mining business, the right and the power of fixing by contract the amount of wages the employee is to receive and the mode in which such wages are to be ascertained.

That is, the Court considered the basis of computation of miners' wages something that could only affect the miner and the operators—something in which the public could have no reasonable concern. How false this assumption was, and how much more sound was the judgment of the legislature, experience soon made manifest. *Ramsey v. People* was followed and relied upon three years later in *In re House Bill 203*,<sup>3</sup> in which the Supreme Court of Colorado advised the legislature of that state that a bill providing for the weighing of coal at the mine in order to fix the compensation of miners was not in accord with the state nor with the federal constitution. As to the latter proposition, we know now that the Court was in error.<sup>4</sup> But the assumption that the public had no interest in the way in which miners' wages were paid, which dictated the decision, was speedily refuted by the ensuing wrangles, strikes, and disorders, due to attempts to secure by force what could not be had by law. "Working people have striven to obtain by strikes what they had failed to secure by statute. The lawlessness which has disgraced Colorado, like the lawlessness which has long disgraced Illinois, is traceable ultimately to the denial of law by the authorities which alone can constitute and establish it."<sup>5</sup>

<sup>1</sup> 17 and 18 Vict. C. 90.

<sup>2</sup> 142 Ill. 380 (1892).

<sup>3</sup> 21 Col. 27 (1895).

<sup>4</sup> *McLean v. Arkansas*, 29 Sup. Ct. Rep. 206.

<sup>5</sup> Kelley, *Some Ethical Gains through Legislation*, p. 162. See also p. 144.

The third decision of the Supreme Court of Illinois referred to, *Braceville Coal Co. v. People*,<sup>1</sup> involves the same questions and reaches the same conclusion as in the *Frorer* case.

Legislation requiring payment in money of wages of employees in mines and factories was held unconstitutional by the Supreme Court of Missouri in *State v. Loomis*.<sup>2</sup> The Court, as usual, cited the New York cases, *Godcharles v. Wigeman*, and *Millet v. People*. It insisted chiefly, however, that the statute tried to create a new sort of incapacity. Black, C. J., said: "This denial of the right to contract is based upon a classification which is purely arbitrary, *because the ground of classification has no relation whatever to the natural capacity of persons to contract.*"

What is "natural capacity to contract"? Have married women natural capacity to contract? The Supreme Court of Illinois seemed to think so in *Ritchie v. People*.<sup>3</sup> If so, there were some unconstitutional restrictions upon their contractual powers at common law which have by no means been removed entirely in all jurisdictions. If not, then it would appear that natural capacity means simply common-law capacity, and that the Court means to tell us that no incapacities not recognized by the common law can be given effect to by legislation.

Legislation of the same sort came before the Supreme Court of Arkansas the following year.<sup>4</sup> The Court upheld it, so far as contracts with corporations were concerned, upon grounds that shall be considered presently, but delivered a vigorous dictum to the effect that it was invalid as to contracts of individuals with individuals. This dictum was afterwards rejected and the legislation was upheld for all purposes in a later decision.<sup>5</sup> The year 1894 produced another decision upholding liberty of contract in *Low v. Rees Printing Co.*,<sup>6</sup>

<sup>1</sup> 147 Ill. 66 (1893).

<sup>2</sup> 115 Mo. 307 (1893).

<sup>3</sup> 155 Ill. 99 (1895).

<sup>4</sup> *Leep v. Railway Co.*, 58 Ark. 407 (1894).

<sup>5</sup> *McLean v. State*, 81 Ark. 304. The dictum in the former case repeated the doctrine of the Illinois cases, the Court saying that a contract with respect to wages between individual and individual "is necessarily harmless, of purely and exclusively private concern, and cannot affect anyone except the parties." Since the coal miners' strike of 1901 courts have not been so sure of this.

<sup>6</sup> 41 Neb. 127. A decision of an inferior court during 1894 may be noted here. In *Wheeling Bridge & Terminal Co. v. Gilmore*, 8 Ohio Cir. Ct. 658, the Court held adversely to a statute requiring extra compensation for all labor over ten hours a day upon railroads.

in which a general eight-hour law for all except farm laborers was held unconstitutional.

In 1895 we meet with three cases. The first of these, *State v. Julow*,<sup>1</sup> decided by the Supreme Court of Missouri, involved the point passed upon in the Adair Case. The Court ruled adversely upon a statute requiring employers not to prohibit their employees from joining unions or compel them to withdraw from unions. The second, decided by the Supreme Court of Colorado, has been spoken of already. The third, a decision of the Supreme Court of Illinois, probably establishes the high-water mark of academic individualism. *Ritchie v. People*<sup>2</sup> involved a statute regulating the hours of labor of women employed in the manufacture of clothing. It was held unconstitutional, first, because (the Court said) the legislature has no right to deprive one class of persons of privileges allowed to other persons under like conditions, and, second, because liberty of contract is a property right and cannot be taken away. With respect to the first of these propositions, one would think it might make some difference what the respective classes were. Certainly legislation does not allow women the same political privileges as other persons. Moreover, one would think the question whether the conditions under which women are employed in the manufacture of clothing are the same as those under which ordinary contracts are made deserves investigation. But to the Court the fact that the jural conditions were the same was enough. On the second point the Court cites the New York cases, *Godcharles v. Wigeman*, and the Goodwill, Frorer, Perry, and Loomis cases. It says that consequences injurious to the public health, welfare, and safety cannot flow from the manufacture of clothing, and hence that such manufacture is not a subject of regulation. But we may grant this and still suggest that the manner of manufacture, by women and in sweatshops, for instance, may be of grave public concern.<sup>3</sup>

<sup>1</sup>129 Mo. 163.

<sup>2</sup>155 Ill. 99.

<sup>3</sup>In the opinion in this case, Magruder, J., says: "It will not be denied that woman is entitled to the same rights under the Constitution to make contracts with reference to her labor as are secured thereby to men" (p. 111). It is worth while to compare this with what the same court said as to usury legislation in *Frorer v. People*, 141 Ill. 171, 186. In the latter case the Court said the legislature could deprive necessitous debtors of their natural right to contract to pay the highest rate of interest an avaricious creditor could extort from them,

The year 1896 produced two dicta in the same line. *Harding v. People*<sup>1</sup> involved a statute regulating the weighing of coal for the purpose of fixing miners' wages in all mines the product whereof was shipped by rail or water. The Court held that the classification of mines was unreasonable and the statute in violation of the provision of the state constitution prohibiting special laws where general legislation could be made to apply. But Mr. Justice Cartwright delivered a very confident dictum that the statute could not be upheld for the further reason that "it takes away the freedom of contracting by the parties for the ascertainment of the weight of coal except by a certain method" (p. 467). Possibly, in view of the recent decision of the Supreme Court of the United States in *McLean v. Arkansas*, the Court would not be so sure of this point today. In *Shaver v. Pennsylvania Co.*<sup>2</sup> a Circuit Court of the United States had before it a statute prohibiting railway employees from contracting away their right to recover for injuries. The statute was held bad because of unreasonable classification. But the Court was also of opinion that it involved an unconstitutional interference with freedom of contract.

Three cases were decided in accordance with the doctrine in question in 1899. In *Johnson v. Goodyear Mining Co.*<sup>3</sup> the Supreme Court of California ruled adversely upon a statute requiring corporations to pay their laborers at least once a month the wages earned during the preceding month. The Supreme Court of Colorado, in *In re Morgan*,<sup>4</sup> had before it a statute regulating hours of employment in underground mines and in smelting and ore-reduction works. The Court said that legislation which prohibited an adult man from working or contracting to work more than eight hours a day in any lawful private business which involved no injury to the general public, on the ground that longer hours of labor would injure him because usury laws existed when the Constitution was adopted. Looking at the matter in this way, is it not pertinent to inquire whether married women could have made *any* contract when the Constitution was adopted? If they could not, would it follow that legislation could regulate the labor and wage contracts of married women but not those of unmarried women, or would the faith of the Court in its distinction be shaken? It may be noted here conveniently that there is also in 1895 a decision of an inferior court of Pennsylvania following *Godcharles v. Wigeman* (*Com. v. Isenberg*, 8 Kulp. 116).

<sup>1</sup> 160 Ill. 459.

<sup>2</sup> 71 Fed. 931.

<sup>3</sup> 127 Cal. 4.

<sup>4</sup> 26 Col. 415.

health, was unconstitutional. It cited the views of the minority in the *Slaughter House Cases*, as restated in the Butchers' Union Company Case, the New York cases, and the several cases on liberty of contract already discussed, relying especially on *Ritchie v. People*. In *State v. Haun*<sup>1</sup> the Supreme Court of Kansas held invalid a statute requiring wages to be paid in money. The Court said:

While it might be desirable and profitable to the employee of such corporation to receive a horse or a cow or a house and lot in payment for his wages, yet the legislature prohibits payment in that way and places the laborer under guardianship, classifying him in respect of freedom of contract with the idiot, the lunatic, or the felon in the penitentiary.

That it is neither desirable nor profitable to the employee to receive wages in orders upon a company store was possibly irrelevant to the purely academic view of such legislation. But surely the Court might have said that the legislation classed the laborer in mines with the sailor, over whose contracts courts of equity exercise a jealous supervision, or a necessitous borrower, whom equity will not suffer to clog his equity of redemption by any sort of collateral provisions, however much his necessities and the exactions of the lender may persuade him they are desirable or profitable. No one ever supposed that equity classed sailor or borrower with idiots, lunatics, or felons.

The next year, 1900, the Supreme Court of Illinois had before it a statute against prohibiting employees from joining or remaining in unions. The Court, following the Julow case, held it an unconstitutional interference with liberty of contract.<sup>2</sup> Magruder, J., said that the employer had a "right" to terminate the contract of employment for any reason he chose, subject to liability for damages if his act was unwarranted. But damages are awarded as compensation for wrongs. How can we say that one must respond in damages for the exercise of a sacred right, protected by the Constitution and beyond the reach of legislation? The Julow and Gillespie cases have been followed in all the subsequent decisions.<sup>3</sup>

<sup>1</sup>61 Kan. 146.

<sup>2</sup>*Gillespie v. People*, 188 Ill. 176.

<sup>3</sup>*State v. Kreutzberg*, 114 Wis. 530 (1902); *Coffeyville Vitrified Brick & Tile Co. v. Perry*, 69 Kan. 297 (1904); *People v. Marcus*, 185 N. Y. 257 (1906).

After 1900 the pendulum had clearly begun to swing the other way. But there are a number of striking decisions taking extreme views as to liberty of contract prior to the Adair Case. The most extreme is *People v. Coler*,<sup>1</sup> in which the Court of Appeals of New York passed adversely upon legislation with reference to hours of labor and wages in municipal contracts. The opinion of O'Brien, J., in this case is a vigorous discussion of the economic and political objections to labor legislation from the individualist standpoint, insisting that such legislation is of no real benefit to the laborer and is subversive of his natural rights. Perhaps the most interesting point made in the opinion is a suggestion that the statute invades a constitutional right of the contractor to make freely whatever contract he can with the city. This overriding of the public interest in municipal contracts in the interest of the private contractor with the municipality goes beyond any other recorded judicial utterance. It can be compared only with Blackstone's dictum that the public good is in nothing more essentially interested than in the protection of every individual's private rights. In *Mathews v. People*<sup>2</sup> the statute, providing a state employment bureau, prescribed that the bureau should not furnish a list of unemployed laborers to any employer whose workmen were on a strike. This was held bad on other grounds, but the Court (per Magruder, J.) declared that it infringed the liberty of contract guaranteed by the Constitution.<sup>3</sup> In *State v. Varney Electrical Supply Co.*<sup>4</sup> the Coler case was followed by the Supreme Court of Indiana. In *State v. Missouri Tie & Timber Co.*<sup>5</sup> the Supreme Court of Missouri held that a statute requiring employees to be paid in cash or negotiable instruments was an unreasonable interference with the liberty of contract of adult employees. In *Lochner v. New York*<sup>6</sup> a bare majority of the Supreme Court of the United States took the reactionary view, as it had

<sup>1</sup>166 N. Y. 1 (1901).

<sup>2</sup>202 Ill. 389 (1903).

<sup>3</sup>Possibly more might be said for this statute than the Court assumed. In view of the disorders and breaches of the peace which experience had shown attend labor conflicts, it might be urged that the purpose of the proviso was to preserve the public peace. A provision that the state employment agency should be used to provide *ordinary* employment, but not employment to break strikes, has some arguable basis in reason when we look to the actual facts.

<sup>4</sup>160 Ind. 338 (1903).

<sup>5</sup>181 Mo. 536 (1904).

<sup>6</sup>198 U. S. 45 (1905).



fairly become by this time, of a statute prescribing the hours of labor in bakeries. The view of the majority in this case, as usual, goes back to the restatement in the Butchers' Union Company Case of the views of the minority in the *Slaughter House Cases*. Mr. Justice Peckham cites his own definition of liberty in *Allgeyer v. Louisiana*,<sup>1</sup> and that definition is admittedly based upon the views of Mr. Justice Field and Mr. Justice Bradley in the cases referred to. In the *Allgeyer Case* he had said :

The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration ; but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties ; to be free to use them in all lawful ways ; to live and work where he will ; to earn his livelihood by any lawful calling ; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned.

One may grant this definition and yet deny the consequence which Mr. Justice Peckham derived from it in the *Lochner* case. His position was, in effect, that a baker had a constitutional right to contract to work as long as he pleased. He says (p. 57):

There is no contention that bakers as a class are not equal in intelligence and capacity to men in other trades or manual occupations, or that they are not able to assert their rights and care for themselves without the protecting arm of the State interfering with their independence of judgment and of action. They are in no sense wards of the State. Viewed in the light of a purely labor law, with no reference whatever to the question of health, we think that a law like the one before us involves neither the safety, the morals nor the welfare of the public, and that the interest of the public is not in the slightest degree affected by such an act. The law must be upheld, if at all, as a law pertaining to the health of the individual engaged in the occupation of a baker. It does not affect any other portion of the public than those who are engaged in that occupation. Clean and wholesome bread does not depend upon whether the baker works but ten hours per day or only sixty hours a week.

It will be seen that this opinion assumes two propositions of fact : (1) that the public has no concern in how long a baker works, because the time he works has no effect on the product of his labor ;

<sup>1</sup> 165 U. S. 578.

(2) that there is nothing in the trade of baking, as carried on in large cities, inimical to the health of those who are employed in it for long hours at a stretch. Here again study of the facts has shown that the legislature was right and the Court was wrong. Actual investigation has shown that the output of shops in which the only kind of men who can be had to work for unreasonable hours under unsanitary conditions are employed is not at all what the public ought to eat, and that long hours in shops of the sort are distinctly injurious to health.<sup>1</sup> But the decisive objection to the position of the majority is put by Mr. Justice Holmes in a few sentences that deserve to become classical:

This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that *my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. . . . The Fourteenth Amendment does not enact Mr. Herbert Spencer's "Social Statics."* . . . *A constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the State or of laissez faire. It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States (pp. 75-76).*

Finally, we have two cases—one in the Court of Appeals of New York<sup>2</sup> and the other, the Adair Case, in the Supreme Court of the United States<sup>3</sup>—in which the doctrine of the Julow case is adopted, and legislation to prevent employers from prohibiting employees from joining or requiring them to withdraw from labor unions is held

<sup>1</sup> *City Club Bulletin*, Chicago, Vol. II, No. 25 (February 24, 1909). See also the authorities cited in the dissenting opinion of Harlan, J., pp. 70-71. Sir Frederick Pollock makes this very pertinent comment: "How can the Supreme Court at Washington have conclusive judicial knowledge of the conditions affecting bakeries in New York? If it has not such knowledge as matter of fact, can it be matter of law that no conditions can reasonably be supposed to exist which would make such an enactment . . . constitutional? (*Law Quarterly Review*, Vol. XXI, p. 212).

<sup>2</sup> *People v. Marcus* 185 N. Y. 257 (1906).

<sup>3</sup> 208 U. S. 161 (1908).

unconstitutional, as infringing liberty of contract. In the former case the Court puts the matter thus:

The free and untrammelled right to contract is part of the liberty guaranteed to every citizen by the federal and state constitutions. Personal liberty is always subject to restraint when its exercise affects the safety, health or moral and general welfare of the public, but subject to such restraint an employer and employee may make and enforce such contract relating to labor as they may agree on (p. 255).

In other words, the public have no interest in bringing about a real equality in labor bargainings, even though thereby strikes and disorders may be obviated, and have no concern with contracts for labor except where the safety, health, or morals of the public at large may be concerned! This is practically the position from which we found the courts starting twenty years before.

Summing up the decisions which insist upon the inviolability of freedom of contract, we find that the following propositions have been decided: (1) Legislation forbidding employers from interfering with the membership of their employees in labor unions is invalid. All the courts have reached this conclusion. (2) Legislation prohibiting the imposition of fines upon employees is invalid. Only one court, however, has passed upon this subject. (3) Legislation providing for the mode of weighing coal in order to fix the compensation of miners is held invalid in Illinois, Missouri, Colorado, and Kansas, and in West Virginia where the parties are natural persons. But the Supreme Court of the United States now holds to the contrary. (4) Legislation against company stores, requiring employers to pay wages in money, is held invalid in Pennsylvania, Illinois, Missouri, Kansas, Colorado, and California, and in West Virginia as to contracts with natural persons. But, as we shall see presently, many states and the United States Supreme Court take the contrary position on one ground or another. (5) Legislation as to the hours of labor has been held bad (*a*) where labor of adult males is concerned (unless very clearly of a dangerous or unhealthy character), in Nebraska and by the United States Supreme Court; (*b*) where labor of adult females is regulated, in Illinois—but most of the state courts and the United States Supreme Court hold to the contrary; (*c*) where the hours of labor on public or municipal contracts

are regulated, in California, New York, and Indiana. But here, again, many state courts and the federal Supreme Court are opposed. (6) One court has also held that legislation cannot prohibit contracts by railway employees for releasing their employers in advance from liability for personal injuries. Federal legislation has probably deprived this question of all practical interest.

Some of the statutes passed upon in the foregoing cases may have gone too far. Some of them involved bad or careless classifications. Some of them ran counter to local constitutional provisions, requiring general laws wherever possible. But one cannot read the cases in detail without feeling that the great majority of the decisions are simply wrong, not only in constitutional law but from the standpoint of the common law, and even from that of a sane individualism. Looking at them upon common-law principles we must first of all recognize that there never has been at common law any such freedom of contract as they postulate. From the time that promises not under seal have been enforced at all, equity<sup>1</sup> has interfered with contracts in the interests of weak, necessitous, or unfortunate promisors. One of the earliest cases of equitable interference was to prevent forfeitures to which promisors had agreed solemnly under seal. Not only did equity grant to a debtor a right of redemption for which he did not stipulate, but it would not and will not let him contract it away in advance or "clog" it by a collateral agreement that will operate to prevent a redemption.<sup>1</sup> In like manner equity interfered to set aside contracts of sailors for the disposition of their wages or of prize money due them where they appeared unfair, one-sided, or inequitable.<sup>2</sup> It interfered also with contracts of heirs or reversioners in case of inadequacy of consideration, on the theory that they were peculiarly liable to be imposed on and subject to the danger of "sacrificing their

<sup>1</sup> "A man will not be suffered in conscience to fetter himself with a limitation or restriction of his right of redemption" (Lord Keeper Henley in *Spurgeon v. Collier*, 1 Eden, 56, 59). "I take it to be an established rule that the mortgagee can never provide at the time of making the loan for any event or condition on which the equity of redemption shall be discharged and the conveyance absolute" (Lord Northington in *Vernon v. Bethell*, 2 Eden, 110, 113). See *Rice v. Noakes*, 2 Ch. 445 (1900); *Jarrah Timber etc. Corporation v. Samuel*, 2 Ch. 1 (1903).

<sup>2</sup> *How v. Weldon*, 2 Ves. Sr. 516, 518; *Taylour v. Rochford*, 2 Ves. Sr. 281. Legislation in America has carried this even further.

future interests in order to meet their present wants.”<sup>1</sup> It refused and refuses to grant specific performance of hard bargains, simply because they are hard, leaving promisees to confessedly inadequate and nugatory actions for damages. But there are no “natural incapacities” here! Courts of equity have simply recognized the facts of human intercourse, and have not suffered jural notions of equality to blind them thereto. Again, Lord Holt laid it down that the two sides of a bilateral contract were independent, because if a promisor was foolish enough to make his promise independent in form it was his own fault.<sup>2</sup> But here too equity made an inroad upon common-law individualism, and on equitable grounds conditions are now said to be implied in law. It has been said that the common law will not help a fool. But equity exists to help and protect him. It is because there are fools to be defrauded and imposed upon and unfortunates to meet with accidents and careless people to make mistakes that we have courts of equity. Surely what equity has done to abridge freedom of contract, legislation may do likewise.

Moreover, usury laws, despite all that has been said to the contrary, furnish a perfect analogy. I have spoken already of the proposition that usury laws existed prior to our constitutions. A more ingenious proposition was advanced by Mr. Justice Field in *Munn v. Illinois*<sup>3</sup> and is adopted by the Court in *State v. Goodwill*.<sup>4</sup> He said that originally no interest at all could be taken; that legislation created the right, and that usury laws were not a limitation of an undoubted right but rather a bound put to a privilege the legislature had conceded. But the obvious answer to this is that enforcing a promise not under seal is also a late, law-granted privilege. The same historical argument that is relied on to dispose of the analogy of usury overthrows the whole doctrine of freedom of contract. The public interest in labor legislation today is much more real than its interest in usury laws. But the two are of the same type.

Rightly considered, even individualist and natural-law principles lead to the same conclusion. The authorities are agreed upon the

<sup>1</sup>*Earl of Chesterfield v. Janssen*, 2 Ves. Sr. 125; *McClure v. Raben*, 125 Ind. 139.

<sup>2</sup>*Thorpe v. Thorpe*, 12 Mod. 455, 464.

<sup>3</sup>94 U. S. 113.

<sup>4</sup>33 W. Va. 179, 186.

"natural" invalidity of a contract to become a slave.<sup>1</sup> But, as Sidgwick points out, any "serious approximation to the condition of slavery" comes to the same thing.<sup>2</sup> Mill, much more liberal than his followers, admits this, saying:

Not only persons are not held to engagements which violate the rights of third parties, but it is sometimes considered a sufficient reason for releasing them from an engagement that it is injurious to themselves.

Some of the writers on natural law had argued that there were cases where natural law justified sale of oneself into slavery. To this Mill says: "He therefore defeats, in his own case, the very purpose which is the justification of allowing him to dispose of himself."<sup>3</sup>

The principle of this applies to any situation where a person by contract imposes substantial restraints upon his liberty. Freedom to impose these restraints, in the hands of the weak and necessitous, defeats the very end of liberty.<sup>4</sup> Liberty and equality *in fact* make for a rational individualism. Academic individualism defeats itself.

Let us turn now to the other side, as represented in the decisions. It is a saving characteristic of Anglo-American case law that decisions upon an unsound principle are gradually surrounded by a mass of exceptions, distinctions, and limitations which preclude extension for the future and soon enable the current of judicial decision to flow normally. Just as in the natural body foreign substances are encysted and walled in and thus deprived of power for evil, the body of our case law has the faculty of encysting and walling in rules and doctrines at variance with a sound condition of the law. Such a process has long been going on with respect to extreme doctrines of liberty of contract. As a result we may now recognize six categories of cases in which it has been laid down that labor legislation may interfere with and infringe upon liberty of contract. The first of these is the case of corporations. Under the power to amend the

<sup>1</sup>"The principle of freedom cannot require that he should be free not to be free. *It is not freedom to be allowed to alienate his freedom*" (Spencer, Justice, sect. 70); Mill, Liberty, chap. v.

<sup>2</sup>Elements of Politics, 2d ed., p. 93.

<sup>3</sup>Liberty, chap. v.

<sup>4</sup>See a case in point in Dicey, Law and Public Opinion in England, pp. 264-265.

charters of corporations, which all states now reserve, it is held that the state may define the power of corporations to contract, and that natural persons can have no claim of right to contract with these creatures of the state beyond their powers. This doctrine, as applied to labor legislation, originated in Maryland in 1880.<sup>1</sup> It has been followed in Rhode Island,<sup>2</sup> West Virginia,<sup>3</sup> Arkansas,<sup>4</sup> Tennessee,<sup>5</sup> and the Supreme Court of the United States.<sup>6</sup> It was adopted by an appellate court in Kansas,<sup>7</sup> but rejected by the Supreme Court.<sup>8</sup> It has been rejected also in California,<sup>9</sup> Illinois,<sup>10</sup> and Missouri.<sup>11</sup> Second, it has been held that even if wages themselves may not be regulated, the data from which to fix wages by any contract to be entered into may be regulated in order to prevent fraud.<sup>12</sup> But the decisions noted above as to weighing statutes are to the contrary. Third, it is held that hours and conditions of labor in unhealthy occupations, such as mining, work in smelters, and the like, may be regulated.<sup>13</sup> But just how unhealthy the occupation must be so that the court will know it to be such from its general information the *Lochner* case leaves in doubt. Fourth, the overwhelming weight of authority is to the effect that the legislature may regulate the hours and conditions of labor of women and children.<sup>14</sup> Here it is said there are "natural" incapacities. But Illinois holds to the contrary as to

<sup>1</sup> *Shaffer v. Mining Co.*, 55 Md. 74.

<sup>2</sup> *State v. Brown & Sharpe Mfg. Co.*, 18 R. I. 16 (1892).

<sup>3</sup> *State v. Peel Splint Coal Co.*, 36 W. Va. 802 (1892).

<sup>4</sup> *Leep v. Railway Co.*, 58 Ark. 507 (1894); *Railway Company v. Paul*, 64 Ark. 83 (1897).

<sup>5</sup> *Dugger v. Insurance Co.*, 95 Tenn. 245 (1895).

<sup>6</sup> *Railway Company v. Paul*, 173 U. S. 404 (1899).

<sup>7</sup> *State v. Haun*, 7 Kan. App. 509.

<sup>8</sup> *State v. Haun*, 61 Kan. 146.

<sup>9</sup> *Johnson v. Goodyear Mining Co.*, 127 Cal. 4.

<sup>10</sup> *Braceville Coal Co. v. People*, 147 Ill. 66.

<sup>11</sup> *State v. Missouri Tie & Timber Co.*, 181 Mo. 536.

<sup>12</sup> *State v. Wilson*, 61 Kan. 32 (1889); *McLean v. Arkansas*, 29 Sup. Ct. Rep. 206 (1908).

<sup>13</sup> *Holden v. Hardy*, 169 U. S. 366 (1898); *In re Boyce*, 27 Nev. 299 (1904); *Ex Parte Kair*, 28 Nev. 127, 425 (1905).

<sup>14</sup> *Com. v. Hamilton Mfg. Co.*, 120 Mass. 383 (1876); *Beyman v. Cleveland*, 39 Ohio St. 651 (1884); *State v. Buchanan*, 29 Wash. 602 (1902); *Wenham v. State*, 65 Neb. 394 (1902); *State v. Muller*, 48 Ore. 252 (1906); *State v. Shorey*, 48 Ore. 396 (1906); *Muller v. Oregon*, 208 U. S. 412; *Starnes v. Allison Mfg. Co.*, 61 S. E. 525 (N. C. 1908).

contracts of adult women.<sup>1</sup> Fifth, it has been held to be within the power of the state to prescribe the conditions upon which it will permit public work to be done for itself or its municipalities, and hence to regulate wages and hours on public contracts.<sup>2</sup> But California, New York, and Indiana, as has been seen, hold the contrary. Finally, a number of cases have taken the sound position that the *mode* of payment of laborers is a matter of public concern; that it is competent for the legislature to require that they be paid in money or negotiable paper, and that it is competent to require that they be paid promptly at stated intervals.<sup>3</sup> Several of these cases reject the distinction between corporations and natural persons in this connection.<sup>4</sup> But, what is worth more, a number clearly recognize the actual facts of inequality as between employer and employee in bargaining for labor in many sorts of employment.<sup>5</sup> And in *Hancock v. Yaden Elliott, J.*, makes it clear from abundant examples that limitations upon freedom of contract in the interest of individual contracting parties have always existed. It is unfortunate that the sweeping assertions of *Godcharles v. Wigeman* should have been made the model for subsequent cases with this decision at hand in the books.

What, then, is the hope for future labor legislation? On the whole, one must say that it is bright. Not only do the cases last noted afford many means for escape from the line of decisions first considered but there are indications that the courts are ready to seek such escape. The opinion of Mr. Justice Day in *McLean v. Arkansas* especially is fraught with promise of a return on the part of the federal Supreme Court to its sounder views prior to

<sup>1</sup>*Ritchie v. People*, 155 Ill. 99.

<sup>2</sup>*U.S. v. Martin*, 94 U.S. 400 (1876); *State v. Atkin*, 64 Kan. 7 (1901); *Atkin v. Kansas*, 191 U.S. 207 (1903); *In re Broad*, 36 Wash. 449 (1904).

<sup>3</sup>*Hancock v. Yaden*, 121 Ind. 366 (1889); *Opinion of the Justices*, 163 Mass. 589 (1895); *Harbison v. Knoxville Iron Co.*, 103 Tenn. 421 (1899); *Dayton Coal & Iron Co. v. Barton*, 103 Tenn. 604 (1899); *Knoxville Coal & Iron Co. v. Harbison*, 183 U.S. 13 (1901); *International Text Book Co. v. Weissinger*, 160 Ind. 349 (1902).

<sup>4</sup>*Opinion of Justices*, 163 Mass. 589; *Harbison v. Knoxville Iron Co.*, 103 Tenn. 421.

<sup>5</sup>Notably *International Text Book Co. v. Weissinger* and *McLean v. Arkansas*.



the *Lochner* and *Adair* cases. Even the Court of Appeals of New York has recently approved this significant remark:

Under a judicial system which has for centuries magnified the sacredness of individual rights, there is much less danger of doing injustice to the individual than there is in overlooking the obligations of those in authority to organized society.<sup>1</sup>

Possibly the decisions first considered, or some of them, were not without good effect. Doubtless much of the earlier legislation was crude and some of it was premature. But, on the other hand, those decisions wrought an injury to the courts and to the public regard for law, and for constitutional law in particular, far beyond any such incidental good. An acute and well-informed observer said recently:

From my own experience I should say, perhaps, that the one symptom among workingmen which most definitely indicates a class feeling is a growing distrust of the integrity of the courts—the belief that the present judge has been a corporation attorney, that his sympathies and experience and his whole view of life is on the corporation side.<sup>2</sup>

The attitude of many of our courts on the subject of liberty of contract is so certain to be misapprehended, is so out of the range of ordinary understanding, the decisions themselves are so academic and so artificial in their reasoning, that they cannot fail to engender such feelings. Thus those decisions do an injury beyond the failure of a few acts. These acts can be replaced as legislatures learn how to comply with the letter of the decisions and to evade the spirit of them. But the lost respect for courts and law cannot be replaced. The evil of those cases will live after them in impaired authority of the courts long after the decisions themselves are forgotten.

ROSCOE POUND

HARVARD LAW SCHOOL

<sup>1</sup>Werner, J., in *People v. Strollo*, 191 N. Y. 42, 69.

<sup>2</sup>Jane Addams in *American Journal of Sociology*, Vol. XIII, p. 772.

## XXXVIII

### HOURS OF LABOR AND REALISM IN CONSTITUTIONAL LAW<sup>1</sup>

THE Massachusetts Supreme Court was called upon recently to consider the constitutionality of the following statute:

Employees in and about steam railroad stations in this Commonwealth designated as baggage men, laborers, crossing tenders, and the like, shall not be employed for more than nine working hours in ten hours' time; the additional hour to be allowed as a lay off.

The increasing demand for shorter hours of labor throughout the industrial world, the likelihood that such demand will receive legislative recognition, the nation-wide importance of the attitude of the judiciary toward such legislation; conversely, the attitude of public opinion upon the continued exercise by the courts of their traditional power under the American constitutional system,—all these considerations, and more, justify a constant critique within the profession of the point of view, no less than the explicit factors, which control judicial decisions upon social and industrial legislation.<sup>2</sup>

The question before the Massachusetts Supreme Court was not a new question. Necessarily, therefore, the Court had to consider the applicable precedents, and the legal thinking which was embodied therein.<sup>3</sup> What, then, was the legal background? It will be serviceable,

<sup>1</sup>From *Harvard Law Review*, Vol. XXIX (1916), pp. 353-373.

<sup>2</sup>Valuable contributions have been made in recent years which will be referred to later, particularly the admirable papers of Professor Ernst Freund, "Limitation of Hours of Labor and the Federal Supreme Court," *Green Bag*, Vol. XVII, p. 411; Judge Learned Hand, "Due Process of Law and the Eight-Hour Day," *Harvard Law Review*, Vol. XXI, p. 495; and Professor Roscoe Pound, "Liberty of Contract," *Yale Law Journal*, Vol. XVIII, p. 454 (see above, Chapter XXXVII).

<sup>3</sup>This paper will concern itself wholly with the validity of the regulation of hours of labor as a problem in what Mr. Justice Holmes calls the "apologetics of the police power." Therefore objections to the specific statute under consideration because (1) it fails to make provision for emergencies, (2) it is a denial of the equal protection of the laws by reason of arbitrary classification,

perhaps, briefly to summarize the state of the authorities dealing with regulation of the hours of labor. Such a summary will tell a useful tale of legal history; it will do more—it may guide us not a little in the solution of present-day constitutional problems.

For the purpose of legal analysis these cases fall into three groups:<sup>1</sup> (1) regulation of the labor of women and children; (2) regulation of labor in dangerous or peculiarly unhealthful employments; and (3) regulation of labor in industry generally.

### I. REGULATION OF LABOR OF WOMEN AND CHILDREN

*Commonwealth v. Hamilton Mfg. Co.*, 120 Mass. 383 (1876), sustained a law prohibiting the labor of women and children for more than sixty hours per week in manufacturing establishments. The statute was sustained as a matter of course. No reference whatever was made to the Fourteenth Amendment, and counsel was apparently unable to "refer to any particular clause of the [Massachusetts] Constitution to which this provision is repugnant" (p. 384).

*Ritchie v. People*, 155 Ill. 98 (1895),<sup>2</sup> invalidated an eight-hour law for women as "a purely arbitrary restriction upon the fundamental right of the citizen to control his or her own time and faculties" (p. 108).

*Wenham v. State*, 65 Neb. 394 (1902),<sup>3</sup> sustained a sixty-hour-per-week law for women on the ground that "women and children have always, to a certain extent, been wards of the state," and that while "the employer and the laborer are practically on an equal footing . . . these observations do not apply to women and children" (p. 405).

and (3) it interferes with a field taken over by Congress in the Hours of Service Act of March 4, 1907, or special arguments in its favor, based (a) on the power to amend corporate charters and (b) on the fact that a special obligation may be imposed on public-service companies, are all put on one side.

<sup>1</sup> Cases involving the validity of legislation as to hours of labor upon public works or work done for the public are not considered. All recent important authorities now sustain such legislation, not as an exercise of the police power but as an assertion by the state of its right to regulate the conditions under which public work shall be done. (*Atkin v. United States*, 191 U.S. 207 (1903); *People v. Crane*, 214 N.Y. 154, 108 N.E. 427 (1915), affirmed, 239 U.S. 195 (1915); *Heim v. McCall*, 214 N.Y. 629, 108 N.E. 1095 (1915), affirmed, 239 U.S. 175 (1915).)

<sup>2</sup> 40 N.E. 454.

<sup>3</sup> 91 N.W. 421.

*State v. Buchanan*, 29 Wash. 602 (1902),<sup>1</sup> sustained a ten-hour law for women in mechanical and mercantile establishments.

It is a matter of universal knowledge with all reasonably intelligent people of the present age that continuous standing on the feet by women for a great many consecutive hours is deleterious to their health. . . . While the principles of justice are immutable, changing conditions of society and the evolution of employment make a change in the application of principles absolutely necessary to an intelligent administration of government. In the early history of the law, when employments were few and simple, the relative conditions of the citizen and the state were different, and many employments and uses which were then considered inalienable rights have since, from the very necessity of changed conditions, been subjected to legislative control, restriction, and restraint (p. 610).

*People v. Williams*, 189 N. Y. 131 (1907),<sup>2</sup> declared invalid a statute prohibiting night work of women because "it is, certainly, discriminative against female citizens, in denying to them equal rights with men in the same pursuit" (p. 135).

*Burcher v. People*, 41 Col. 495 (1907),<sup>3</sup> nullified an eight-hour law for women and children because (1) under the Colorado Constitution the legislature must specifically designate what pursuits are unhealthful, and (2) even if the Court had power to pass on the issue "the laundry business must be considered healthful; for counsel themselves, in their stipulation of facts, on which the record shows the cause was decided, are in accord that such occupation is healthful" (p. 504).

*Muller v. Oregon*, 208 U. S. 412 (1908), sustained the constitutionality of a ten-hour law for women in any mechanical establishment or factory or laundry.

The legislation and opinions referred to . . . may not be, technically speaking, authorities, and in them is little or no discussion of the constitutional question presented to us for determination, yet they are significant of a widespread belief that woman's physical structure, and the functions she performs in consequence thereof, justify special legislation restricting or qualifying the conditions under which she should be permitted to toil (p. 420).

The limitations which this statute places upon her contractual powers, upon her right to agree with her employer as to the time she shall labor, are not imposed solely for her benefit, but also largely for the benefit of all (p. 422).

<sup>1</sup>70 Pac. 52.

<sup>2</sup>81 N.E. 778.

<sup>3</sup>93 Pac. 14.

*Ritchie & Co. v. Wayman*, 244 Ill. 509 (1910),<sup>1</sup> sustained a ten-hour law for women in any mechanical establishment, factory, or laundry. A heroic effort is made to distinguish the first Ritchie case from the second Ritchie case. It is true that one was an eight-hour law and the other was a ten-hour law, but the two cases are, in fact, irreconcilable in their underlying point of view.

*Sturges v. Beauchamp*, 231 U.S. 320 (1914), sustained the Illinois Child Labor Law as an exercise "of the protective power of government."

*Riley v. Massachusetts*, 232 U.S. 671 (1914), sustained a Massachusetts fifty-four-hour-per-week statute.

*Hawley v. Walker*, 232 U.S. 718 (1914), sustained an Ohio nine-hour statute.

*Miller v. Wilson*, 236 U.S. 373 (1915); *Bosley v. McLaughlin*, 236 U.S. 385. In these two able opinions by Mr. Justice Hughes the United States Supreme Court sustained the extremest regulation of hours of labor to date—California statutes limiting the labor of women in certain pursuits to forty-eight hours per week.

It is manifestly impossible to say that the mere fact that the statute of California provides for an eight-hour day, or a maximum of forty-eight hours a week, instead of ten hours a day or fifty-four hours a week, takes the case out of the domain of legislative discretion. This is not to imply that a limitation of the hours of labor of women might not be pushed to a wholly indefensible extreme, but there is no ground for the conclusion here that the limit of the reasonable exertion of protective authority has been overstepped (p. 382).

*People v. Schweinler Press*, 214 N. Y. 395 (1915).<sup>2</sup> The Court of Appeals sustained a statute prohibiting night work for women and with courageous frankness expressly overruled *People v. Williams*, *supra*.

Impairment caused by exhaustion or even ordinary weariness must be repaired by normal and refreshing sleep and rest if health and efficiency are to be preserved (p. 401).

... surely it is a matter of vital importance to the state that the health of thousands of women working in factories should be protected and safeguarded from any drain which can reasonably be avoided. This is not only for their own sakes but, as is and ought

<sup>1</sup>91 N. E. 695.

<sup>2</sup>108 N. E. 639.

to be constantly and legitimately emphasized, for the sake of the children whom a great majority of them will be called on to bear and who will almost inevitably display in their deficiencies the unfortunate inheritance conferred upon them by physically broken down mothers (pp. 405-406).

## II. REGULATION OF LABOR IN DANGEROUS EMPLOYMENTS

*Holden v. Hardy*, 169 U. S. 366 (1898),<sup>1</sup> sustained a Utah statute limiting to eight the hours of labor in underground mines. Familiar as this case is, a few sentences from the powerful opinion of Justice Brown will bear quoting:

The enactment does not profess to limit the hours of all workmen, but merely those who are employed in underground mines, or in the smelting, reduction, or refining of ores or metals. These employments, when too long pursued, the legislature has judged to be detrimental to the health of the employees, and, so long as there are reasonable grounds for believing that this is so, its decision upon this subject cannot be reviewed by the federal courts (p. 395).

The legislature has also recognized the fact, which the experience of legislators in many states has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority (p. 397).

The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression or spoliation of a particular class (p. 398).

*In re Morgan*, 26 Col. 415 (1899).<sup>2</sup> The opinion of the United States Supreme Court in *Holden v. Hardy*, *supra*, was not convincing to the Supreme Court of Colorado, and with sturdy

<sup>1</sup> It is worth while to note that Mr. Justice Brewer and Mr. Justice Peckham dissented.

<sup>2</sup> 58 Pac. 1071.

independence that court nullified a similar eight-hour law as to underground mines.<sup>1</sup>

The result of our deliberation, therefore, is that this act is an unwarrantable interference with, and infringes, the right of both the employer and employee in making contracts relating to a purely private business, in which no possible injury to the public can result (p. 450).

*Re Ten Hour Law for Street Railway Corporations*, 24 R. I. 603 (1902),<sup>2</sup> in an advisory opinion declared constitutional a ten-hour statute for employees operating street railways.

*Ex parte Boyce*, 27 Nev. 299 (1904);<sup>3</sup> followed in *Ex parte Kair*, 28 Nev. 127; *ibid.* 425 (1905);<sup>4</sup> and

*State v. Cantwell*, 179 Mo. 245 (1904),<sup>5</sup> sustained an eight-hour law for underground mining work.

*Baltimore & Ohio R. R. v. Interstate Commerce Commission*, 221 U. S. 612 (1911), sustained the constitutionality of the Hours of Service Act of March 4, 1907.

The fundamental question here is whether a restriction upon the hours of labor of employees who are connected with the movement of trains in interstate transportation is comprehended within this sphere of authorized legislation. This question admits of but one answer. The length of hours of service has direct relation to the efficiency of the human agencies upon which protection to life and property necessarily depends. This has been repeatedly emphasized in official reports of the Interstate Commerce Commission, and is a matter so plain as to require no elaboration. In its power suitably to provide for the safety of employees and travelers, Congress was not limited to the enactment of laws relating to mechanical appliances, but it was also competent to consider, and to endeavor to reduce, the dangers incident to the strain of excessive hours of duty on the part of engineers, conductors, train dispatchers, telegraphers, and other persons embraced within the class defined by the act. And in imposing restrictions having reasonable relation to this end there is no interference with liberty of contract as guaranteed by the Constitution (pp. 618-619).

<sup>1</sup>To avoid the grotesque clash between state courts and the Supreme Court as to the scope of constitutional protection of the same fundamental rights, a recommendation to leave the protection of such rights entirely to the Fourteenth Amendment, and therefore omit the corresponding provisions of the Bill of Rights in our state constitutions, has received the support of distinguished members of the profession and of statesmen like ex-President Taft and ex-Attorney-General Wickersham.

<sup>2</sup>54 Atl. 602.

<sup>3</sup>75 Pac. 1.

<sup>4</sup>80 Pac. 463; 82 *id.* 453.

<sup>5</sup>78 S. W. 569.

## III. REGULATION OF HOURS OF LABOR IN GENERAL

*Low v. Rees Printing Co.*, 41 Neb. 127 (1894),<sup>1</sup> declared unconstitutional an eight-hour day for mechanics and laborers, both because it was class legislation and violative of liberty of contract. After naïvely regarding it as irrelevant to consider the impulse back of such legislation<sup>2</sup> the Court nullified the statute as an attempt by the legislature to "prohibit harmless acts which do not concern the health, safety, and welfare of society" (p. 147).

*Lochner v. New York*, 198 U. S. 45 (1905). In this well-known case the Supreme Court invalidated a ten-hour law for bakers. Speaking for the five majority judges, Mr. Justice Peckham declared that "to the common understanding the trade of a baker has never been regarded as an unhealthy one" (p. 59), and therefore "the act is not, within any fair meaning of the term, a health law, but is an illegal interference with the rights of individuals, both employers and employees, to make contracts regarding labor upon such terms as they may think best, or which they may agree upon with the other parties to such contracts. Statutes of the nature of that under review, limiting the hours in which grown and intelligent men may labor to earn their living, are mere meddlesome interferences with the rights of the individual. . . ." (p. 61).

The vigorous dissenting opinions of Harlan, White, Day, and Holmes, JJ., are familiar. But the following, from the opinion of Mr. Justice Holmes, pithily and completely puts the other point of view in the clash of ideas then before the Court:

I think that the word liberty in the Fourteenth Amendment is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law. It does not need research to show that no such sweeping condemnation can be passed upon the statute before us. A reasonable man might think it a proper measure on the score of health. Men whom I certainly could not pronounce unreasonable

<sup>1</sup> 59 N. W. 362.

<sup>2</sup> "For some reason, *not necessary to consider*, there has in modern times risen a sentiment favorable to paternalism in matters of legislation" (p. 135, italics ours).



would uphold it as a first installment of a general regulation of the hours of work (p. 76).<sup>1</sup>

*State v. Miksicek*, 225 Mo. 561 (1909),<sup>2</sup> invalidated a six-days act—rest one day in seven—for bakers as an arbitrary infringement of liberty of contract.

*State v. Lumber Co.*, 102 Miss. 802 (1912),<sup>3</sup> sustained a ten-hour law for labor employed in manufacturing. The Court decided that the *Lochner* case did not control on the facts, and, significantly, relied on the dissenting opinions in that case for the statement of the governing principles.

It would not be unreasonable for the legislature to decide that it would promote the health, peace, morals, and general welfare of all laborers engaged in the work of manufacturing or repairing if they were not permitted to extend their labor over ten hours a day, and the legislature could also decide that the best interests of the people in the state would be promoted by limiting the time of work of this numerous class of its citizenry to the time mentioned. In fact, when we consider the present manner of laboring, the use of machinery, the appliances, requiring intelligence and skill, and the general present-day manner of life, which tends to nervousness, it seems to us quite reasonable, and in no way improper, to pass such law so limiting a day's labor (p. 834).

On rehearing the decision was affirmed,<sup>4</sup> the Court taking occasion to comment upon "the notable fact that it is rare for the seller of labor to appeal to the courts for the preservation of his inalienable rights to labor. This inestimable privilege is generally the object of the buyer's disinterested solicitude. Some day, perhaps, the inalienable right to rest will be the subject of litigation . . ." <sup>5</sup> (103 Miss. 267-268).

<sup>1</sup> See the elaboration and application of this last thought in Mr. Justice Holmes's dissenting opinions in *Adair v. United States*, 208 U.S. 161, 190 (1908), and *Coppage v. Kansas*, 236 U.S. 1, 26-27 (1915).

<sup>2</sup> 125 S.W. 507.

<sup>3</sup> 59 So. 923.

<sup>4</sup> *State v. Lumber Co.*, 103 Miss. 263, 60 So. 215 (1913).

<sup>5</sup> See a similar observation in *Holden v. Hardy*, 169 U.S. 369, 397, *supra*: "It may not be improper to suggest in this connection that although the prosecution in this case was against the employer of labor, . . . his defense is not so much that his right to contract has been infringed upon, but that the act works a peculiar hardship to his employees, whose right to labor as long as they please is alleged to be thereby violated. The argument would certainly come with better grace and greater cogency from the latter class."

*State v. Barba*, 132 La. 768 (1913),<sup>1</sup> held unconstitutional an eight-hour law for stationary firemen, both because it constituted an arbitrary classification and impaired the liberty of contract.

*State v. Bunting*, 71 Ore. 259 (1914),<sup>2</sup> sustained a ten-hour law for labor in factories. In this case the Court again found the dissenting opinions of the *Lochner* case rather than the decision on the facts of that case the relevant authority.

A certain minimum of physical well-being is necessary in order that social life may exist, the usefulness and intelligence of the citizens be increased, and the progress of civilization accelerated. Freund, "Police Power," sects. 8, 10). . . . The required minimum of well-being varies in different periods, but rises with advancing civilization until it includes a certain standard of comfort. . . . It is an undeniable fact that prolonged and excessive physical labor is performed at the expense of the mental powers, and it requires no argument to show that a man who day in and day out labors more than ten hours must not only deteriorate physically, but mentally. . . . In view of the well-known fact that the custom in our industries does not sanction a longer service than ten hours per day, it cannot be held, as a matter of law, that the legislative requirement is unreasonable or arbitrary as to hours of labor. . . . It is urged . . . that if it is possible for the legislature to make the declaration that to work in a factory more than ten hours in one day is injurious to the health, then that body can make four hours a day's work, and require two hours of the work to be performed before eight o'clock A.M. It is sufficient to say that the question of four hours' constituting a day's labor, or when any part of it shall be done, is not now before this Court (pp. 267, 272, 273).

*People v. Klinck Packing Co.*, 214 N. Y. 121 (1915).<sup>3</sup> "The right to rest,"—or rather the need for leisure,—to which the Supreme Court of Mississippi adverted in 1912, quickly received authoritative recognition from the New York Court of Appeals. In this case there was sustained a statute requiring one day of rest in seven. The proper sphere of legislative discretion and a correspondingly limited scope of judicial review are put most excellently by Judge Hiscock:

Our only inquiry must be . . . whether it can fairly be believed that its [the statute's] natural consequences will be in the direction of betterment of public health and welfare, and, therefore, that it is

<sup>1</sup>61 So. 784.

<sup>2</sup>Appeal now pending before the Supreme Court of the United States.

<sup>3</sup>108 N. E. 278.

one which the state for its protection and advantage may enact and enforce. It seems to me very clear that we may answer that it is such an one. . . . A constantly increasing study of industrial conditions I believe leads to the conviction that the health, happiness, intelligence and efficiency even of an adult man laboring in such employments [factory and mercantile] as those mentioned in this statute will be increased by a reasonable opportunity for rest, for outdoor life and recreation, for attention to his own affairs, and, if he will, study and education.

Then we come to the question, what is a reasonable opportunity, and within wide limits that problem is for the legislature. Anybody would probably say that one day in thirty or sixty would be too little and one day in each two days extravagant. Between these extremes none can safely assert that the mean adopted by the legislature of one day in seven is unreasonable (pp. 127-128).<sup>1</sup>

A study of these opinions indicates a change not only in the decisions but in the groundwork of the decisions. We find a shift in the point of emphasis, a modification of the factors that seem relevant, a different statement of the issues involved, and a difference in the technic by which they are to be solved. The turning point comes in 1908 with *Muller v. Oregon*.<sup>2</sup> While lone voices of wisdom had been heard for almost two decades,<sup>3</sup> and the tendency was clearly in its direction, yet this case marks the culmination.

Prior to 1908 the decisions disclose certain marked common characteristics:

1. Despite disavowal that the policy of legislation is not the courts' concern, there is an unmistakable dread of the class of legislation under discussion.<sup>4</sup> Intense feeling against the policy of the legislation must inevitably have influenced the result in the decisions. In truth

<sup>1</sup>Since the decision of the Massachusetts case under discussion the Supreme Court of Louisiana has again declared unconstitutional an eight-hour law for stationary firemen, partly as unfair classification (because applying only to cities over 50,000) and partly as an impairment of liberty of contract (77 So. (La.) 70 (1915)).

<sup>2</sup>208 U. S. 412, *supra*.

<sup>3</sup>See the dissenting opinion of Mr. Justice Holmes in *Commonwealth v. Perry*, 155 Mass. 117, 123 (1891); Thayer, *Legal Essays*, 1; *Green Bag*, Vol. XXVI, pp. 511, 514.

<sup>4</sup>"The tendency of legislatures, in the form of regulatory measures, to interfere with the lawful pursuits of citizens is becoming a marked one in this country, and it behooves the courts, firmly and fearlessly, to interpose the barriers of their judgments when invoked to protest against legislative acts plainly

this presents the point of greatest stress in our constitutional system, for it requires minds of unusual intellectual disinterestedness, detachment, and imagination to escape from the too easy tendency to find lack of power where one is convinced of lack of wisdom.

2. Legislation is sustained as part of the prevailing philosophy of individualism, as an exceptional protection to certain individuals as such, and not as a recognition of a general social interest. Thus legislation is supported either because women and children are wards of the state, are not *sui juris*, or to relieve certain needy individuals in the community from coercion.<sup>1</sup> The underlying assumption was, of course, that industry presented only contract relations between individuals. That industry is part of society, the relation of business to the community, was naturally enough lost sight of in the days of pioneer development and free land.<sup>2</sup>

3. The courts here deal with statutes seeking to affect in a very concrete fashion the sternest actualities of modern life: the conduct of industry and the labor of human beings therein engaged. Yet the cases are decided, in the main, on abstract issues, on tenacious theories of economic and political philosophy. There is lack of scientific method either in sustaining or attacking legislation. Legislation is sustained or attacked on vague humanitarianism, on pressure of immediate suffering, or "common understanding." This is not the fault of the courts. It was characteristic of our legislative processes, as well as of the judicial proceedings which called them into question. It was true, substantially, of the social legislation of the nineteenth century.<sup>3</sup>

The courts decided these issues on *a priori* theories, on abstract assumptions, because scientific data were not available or at least

transcending the powers conferred by the Constitution upon the legislative body" (*People v. Williams*, 189 N.Y. 131, 135, 81 N.E. 778, 780 (1907)).

"This interference on the part of the legislatures of the several states with the ordinary trades and occupations of the people seems to be on the increase" (*Lochner v. New York*, 198 U.S. 45, 63 (1905)).

<sup>1</sup> *Holden v. Hardy*, 169 U.S. 366, 397, *supra*.

<sup>2</sup> See the stimulating paper, "Labor, Capital and Business at Common Law," by Edward A. Adler, *Harvard Law Review*, Vol. XXIX, p. 241, particularly pp. 262-274.

<sup>3</sup> The earliest Factory Act was the "work of benevolent Tories" (Dicey, *Law and Opinion in England*, 2d ed., p. 110, and Lecture VII, particularly pp. 220 *et seq.*, 228, 229; Goldmark, *Fatigue and Efficiency*, chap. i).

had not been made available for the use of courts. But all this time scientific data had been accumulating. Organized observation, investigation, and experimentation produced facts, and science could at last speak with rational if tentative authority. There was a growing body of the world's experience and the validated opinions of those competent to have opinions. Instead of depending on *a priori* controversies raging around jejune catchwords like "individualism" and "collectivism," it became increasingly demonstrable what the effect of modern industry on human beings was and what the reasonable likelihood to society of the effects of fixing certain minimum standards of life.

The Muller case, in 1908, was the first case presented to our courts on the basis of authoritative data. For the first time the arguments and briefs breathed the air of reality. The response of the Court on this method of presenting the case is significant.

In patent cases counsel are apt to open the argument with a discussion of the state of the art. It may not be amiss, in the present case, before examining the constitutional question, to notice the course of legislation as well as expressions of opinion from other than judicial sources. In the brief filed by Mr. Louis D. Brandeis, for the defendant in error, is a very copious collection of all these matters. . . .<sup>1</sup>

<sup>1</sup>*Muller v. Oregon*, 208 U.S. 412, 419 (1907). The great mass of data contained in the brief is epitomized in the margin of the Court's opinion. Miss Josephine Goldmark, Publication Secretary of National Consumers' League, collaborated with Mr. Brandeis in the preparation of this and subsequent briefs, which are now available in Part II of Miss Goldmark's book "Fatigue and Efficiency."

The present-day demand for scientific ascertainment of facts for legislation and administration is strikingly illustrated by Miss Lathrop in her Third Annual Report as Chief of the United States Children's Bureau (1915). "The whole field of child labor is thus far singularly barren of scientific study. . . . Full and intelligent protection of the physique and mental powers of the youthful workers in this country requires costly and laborious studies in laboratory and in workshop. . . . The Children's Bureau now desires to call attention to these studies and to submit the reasonableness of spending money to make them. It proposes a later presentation of carefully considered plans for which certain preparatory studies are now going forward. The more rapidly the restrictive child-labor legislation becomes uniform, the more evident must be the need of studying the welfare of the young worker within the occupation, so that we may secure just standards for the use of labor, as new standards for material are being developed" (pp. 23, 24).

The legislation and opinions referred to in the margin may not be, technically speaking, authorities, and in them is little or no discussion of the constitutional question presented to us for determination, yet they are significant of a widespread belief that woman's physical structure, and the functions she performs in consequence thereof, justify special legislation restricting or qualifying the conditions under which she should be permitted to toil. Constitutional questions, it is true, are not settled by even a consensus of present public opinion, for it is the peculiar value of a written constitution that it places in unchanging form limitations upon legislative action, and thus gives a permanence and stability to popular government which otherwise would be lacking. At the same time, *when a question of fact is debated and debatable, and the extent to which a special constitutional limitation goes is affected by the truth in respect to that fact*, a widespread and long-continued belief concerning it is worthy of consideration<sup>1</sup> (italics ours).

That upon such showing the Supreme Court should sustain the contested statute was inevitable. But the Muller case is "epoch-making" not because of its decision but because of the authoritative cognition by the Supreme Court that the way in which Mr. Brandeis presented the case—the support of legislation by an array of facts which established the *reasonableness* of the legislative action, however it may be with its wisdom—laid down a new technic for counsel charged with the responsibility of arguing such constitutional questions, and an obligation upon courts to insist upon such method of argument before deciding the issue, surely, at least, before deciding the issue adversely to the legislature. For there can be no denial that the technic of the brief in the Muller case has established itself through a series of decisions within the last few years, which have used not only change in decisions but the much more vital change in method of approach to constitutional questions.<sup>2</sup>

The most striking illustration is the attitude of the New York Court of Appeals in *People v. Schweinler Press*.<sup>3</sup> In that case, it will be

<sup>1</sup> *Muller v. Oregon*, 208 U. S. 420-421.

<sup>2</sup> See briefs in *Ritchie & Co. v. Wayman*, 244 Ill. 509, 91 N. E. 695 (1910); *Wiley v. Walker*, 232 U. S. 718 (1914); *Miller v. Wilson*, 236 U. S. 373 (1915); *Wiley v. McLaughlin*, 236 U. S. 385 (1915); *Stettler v. O'Hara*, 69 Ore. 519, 9 Pac. 743 (1914) (and brief in the same case now pending before the Supreme Court of the United States); *People v. Schweinler Press*, 214 N. Y. 395, 8 N. E. 639 (1915).

<sup>3</sup> 214 N. Y. 395, 108 N. E. 639 (1915).

recalled, the Court courageously overruled *People v. Williams*, *supra*,<sup>1</sup> and sustained a statute prohibiting night work for women. We find a careful ascertainment of facts by the legislature as the basis of its action, and thereafter a careful presentation of facts before the Court to support the legislative reason. Not only was there a presentation of facts in 1915 such as counsel failed to make in 1907 but there was a presentation of new facts acquired since 1907. If the point of view laid down in this case be sedulously observed in the argument and disposition of constitutional cases, it is safe to say that no statute which has any claim to life will be stricken down by the courts.

While theoretically we may have been able to take judicial notice of some of the facts and of some of the legislation now called to our attention as sustaining the belief and opinion that night work in factories is widely and substantially injurious to the health of women, actually very few of these facts were called to our attention, and the argument to uphold the law on that ground was brief and inconsequential.<sup>2</sup>

There is no reason why we should be reluctant to give effect to new and additional knowledge upon such a subject as this even if it did lead us to take a different view of such a vastly important question as that of public health or disease than formerly prevailed. Particularly do I feel that we should give serious consideration and great weight to the fact that the present legislation is based upon and sustained by an investigation by the legislature deliberately and carefully made through an agency of its own creation, the present factory investigating commission.<sup>3</sup>

These recent cases, dealing with regulation of the hours of labor, do not stand apart but illustrate two dominant tendencies in current constitutional decisions:

1. Courts, with increasing measure, deal with legislation affecting industry in the light of a realistic study of the industrial conditions affected.<sup>4</sup>

2. The emphasis is shifted to community interests, the affirmative enhancement of the human values of the whole community—not

<sup>1</sup>189 N.Y. 131, 81 N.E. 778 (1907).

<sup>2</sup>*People v. Schweinler Press*, 214 N.Y. 395, 411, 108 N.E. 639, 643 (1915).

<sup>3</sup>*Ibid.* 214 N.Y. 395, 412-413, 108 N.E. 639, 644 (1915).

<sup>4</sup>*McLean v. Arkansas*, 211 U.S. 539, 549-550 (1908) (it is significant that Mr. Justice Brewer and Mr. Justice Peckham dissented); *Baltimore & Ohio R.R. v. Interstate Commerce Commission*, 221 U.S. 612, 619 (1911).

merely society conceived of as independent individuals dealing at arms' length with one another, in which legislation may only seek to protect individuals under disabilities or prevent individual aggression in the interest of a countervailing individual freedom.<sup>1</sup>

As a result we find that recent decisions have modified the basis on which legislation limiting the hours of labor is supported. As science has demonstrated that there is no sharp difference in kind as to the effect of labor on men and women, courts recently have followed the guidance of science and refused to be controlled by outworn ignorance. And so we find the Supreme Court of Oregon, in sustaining the ten-hour law for men, observing that "legislative regulation of the hours of labor of men and that of women differ only in the degree of necessity therefor."<sup>2</sup> True enough, we are not out of the woods of difficulty by saying the question is a matter of difference of degree. But once that is recognized, once we cease to look upon the regulation of women in industry as exceptional, as the law's graciousness to a disabled class, and shift the emphasis from the fact that they are *women* to the fact that it is *industry* and the relation of industry to the community which is regulated, the whole problem is seen from a totally different aspect. Once admit it is a question of degree, there follows the recognition—and the conscious recognition is important—that we are balancing interests, that we are exercising judgment, and that the exercise of this judgment, unless so clear as to be undebatable, is solely for the legislature.<sup>3</sup>

What, then, are the common factors in the labor of men and women that would make a limitation of the hours of labor, in employments not dangerous or inherently unhealthy, to ten hours or nine hours an exercise of legislative discretion not beyond the pale of reasonable argument, and therefore to be respected by the courts? They are:

1. "The common physiological phenomenon, fatigue," and the need of rest to repair the waste of the toxin.<sup>4</sup> Can the point where

<sup>1</sup> *People v. Klinck Packing Co.*, 214 N. Y. 121, 128, 108 N. E. 278, 280 (1915).

<sup>2</sup> *State v. Bunting*, 71 Ore. 259, 271, 139 Pac. 731, 735 (1914).

<sup>3</sup> *Price v. Illinois*, 238 U. S. 446, 452 (1915).

<sup>4</sup> See Goldmark, *Fatigue and Efficiency*, chap. ii. The scientific views set forth in Miss Goldmark's book recently formed the basis of an arbitration judgment, in Australia, by Mr. Justice Higgins, in the *Waterside Workers' case* (not yet reported).



the line is to be drawn possibly be fixed *a priori*? Or, at the least, in the light of modern physiology is any layman entitled to say that a limitation of routine manual labor of masses of men to nine hours is a capricious and willful oppression, without sustaining reason?<sup>1</sup>

2. An enlarged conception of leisure and the tendency to regard not only its relation to the immediate effects upon animal health but also its bearing on the industrial output and the demands of citizenship.<sup>2</sup>

3. Experience, based upon adequate trial, with the gradual reduction of labor and the slow increase of hours of leisure encouragingly demonstrates that such limitation of labor and increase of leisure have been put to fruitful uses. The tried measures of curtailing manual labor have added to the sum total of that by which we measure the civilized aspects of life.<sup>3</sup>

This, then, was the "state of the art" which confronted the Massachusetts Supreme Court in passing upon the constitutionality of the nine-hour law in question. One would suppose that in the light of all this it would be an easy matter for the Court to hold that a nine-hour day is not "so extravagant and unreasonable, so disconnected with the probable promotion of health and welfare, that its enactment is beyond the jurisdiction of the legislature,"<sup>4</sup> or, at the very least, that, since the subject is "debatable, the legislature is entitled to its own judgment."<sup>5</sup>

Quite the contrary. The Court held that the statute "is an unwarrantable interference with individual liberty and an interference with property rights, and therefore contrary to constitutions which secure these fundamental rights."<sup>6</sup>

How could such a result have been reached?

1. The case was inadequately presented. The Court was not called upon to pass on the validity of the statute as such, but upon an agreed statement of facts under the statute to the effect that there

<sup>1</sup>*Price v. Illinois*, 238 U. S. 446, 452 (1915), *supra*.

<sup>2</sup>See, for example, Hobson, Work and Wealth, particularly chaps. xiv and xv; Taussig, Inventors and Money Makers, pp. 63, 65 *et seq.*, 71 *et seq.*; U. S. Commissioner of Labor Statistics Royal Meeker, *Annals*, Vol. LXIII, pp. 262, 267.

<sup>3</sup>See Goldmark, Fatigue and Efficiency, p. 279.

<sup>4</sup>*People v. Klinck Packing Co.*, 214 N. Y. 121, 127, 108 N. E. 278, 280 (1915).

<sup>5</sup>*Price v. Illinois*, 238 U. S. 446, 452 (1915).

<sup>6</sup>*Commonwealth v. Boston & M. R. R.*, 110 N. E. (Mass.) 264 (1915).

is nothing inherently unhealthy about the work which the employee did, as it was half performed in the open air and was not arduous.<sup>1</sup> The assumption back of such a statement is that where work is not inherently unhealthy it is immaterial how long such work is pursued. Thus a wholly unscientific concession of fact was made, and therefore a wholly unscientific issue was presented to the Court. But even such an issue was not supported by the available body of scientific facts. No attempt was made to bring to the attention of the Court a detailed, painstaking, thoroughly marshaled array of facts to explain and to fortify the experience and theory back of labor legislation. In other words, the case was not argued in the way in which the decisions in the Muller case, the second Ritchie case, the Hawley case, the Miller case, the Bosley case, and the Schweinler case demanded that it should be argued.

2. One can therefore understand why the Court found the case "governed" by the *Lochner* case, *supra*.<sup>2</sup> Nevertheless, one is compelled to conclude that the illumination that has been cast upon the *Lochner* case during the past decade does not leave to that case any principle which *ipso facto* controls the validity of specific measures regulating hours of labor. The principle of the *Lochner* case is simple enough: that arbitrary restriction of men's activities, unrelated in reason to the "public welfare," offends the Fourteenth Amendment. As to the principle, there is no dispute. But the principle is the beginning and not the end of the inquiry. The field of contention is in its application. The *Lochner* case, judged by its history and by more recent decisions of the Supreme Court, does not in itself furnish the yardstick for its application.

a. It is now clearly enough recognized that each case presents a distinct issue; that each case must be determined by the facts relevant to it; that we are dealing, in truth, not with a question of law but the application of an undisputed formula to a constantly changing and growing variety of economic and social facts.<sup>3</sup> Each case,

<sup>1</sup> *Commonwealth v. Boston & M. R. R.*, 110 N. E. (Mass.) 264 (1915).

<sup>2</sup> *Lochner v. New York*, 198 U. S. 45 (1905).

<sup>3</sup> See *People v. Schweinler Press*, 214 N. Y. 395, 411-412, 108 N. E. 639, 643 (1915); *Bosley v. McLaughlin*, 236 U. S. 385, 392 *et seq.* (1915); *Müller v. Wilson*, 236 U. S. 373, 382 (1915); *McLean v. Arkansas*, 211 U. S. 539, 549-550 (1908).

therefore, calls for a new and distinct consideration not only of the general facts of industry but the specific facts in regard to the employment in question and the specific exigencies which called for the specific statute.

*b.* The groundwork of the *Lochner* case has by this time been cut from under. The majority opinion was based upon "a common understanding" as to the effect of work in bakeshops upon the public and upon those engaged in it. "Common understanding" has ceased to be the reliance in matters calling for essentially scientific determination. "Has not the progress of sanitary science shown," Professor Freund pertinently inquires, "that common understanding is often equivalent to popular ignorance and fallacy?"<sup>1</sup> On the particular issue involved in the *Lochner* case "study of the facts has shown that the legislature was right and the Court was wrong."<sup>2</sup> Either because of matters as to which the Court of its own knowledge cannot know, or, because, not knowing, it cannot assume the nonexistence of facts, contested legislative action should be resolved in favor of rationality rather than capricious oppression. Happily the fundamental constitutional doctrine of the assumption of rightness of legislative conduct, where the court is uninformed, is again rigorously being enforced by the United States Supreme Court.<sup>3</sup>

*c.* So far as the general flavor of the *Lochner* opinion goes, it surely is no longer "controlling." If the body of professional opinion counts

<sup>1</sup> *Green Bag*, Vol. XVII, pp. 411, 416.

<sup>2</sup> Professor Roscoe Pound, "Liberty of Contract," *Yale Law Journal*, Vol. XVIII, pp. 454, 480, and n. 123 (see above, Chapter XXXVII).

<sup>3</sup> Thus, in one of its latest opinions, the Supreme Court refused to upset a "police measure" with the following language:

"Petitioner makes his contention depend upon disputable considerations of classification and upon a comparison of conditions of which there is no means of judicial determination and upon which nevertheless we are expected to reverse legislative action. . . ." (*Hadacheck v. Sebastian*, 239 U.S. 394, 413 (Dec. 20, 1915)).

Here, as elsewhere in the law, Mr. Justice Holmes long ago put the matter with acute finality: "I cannot pronounce the legislation [prohibiting fines against weavers for defective workmanship] void, as based on a false assumption, since I know nothing about the matter one way or the other" (*Commonwealth v. Perry*, 155 Mass. 117, 124-125, 28 N.E. 1126, 1127 (1891)). As to the reasonableness of the legislature's belief that a system of fines affords dangerous temptations for oppressive use, see R. H. Tawney, *Minimum Rates in the Tailoring Industry*, pp. 60 and 95.

for anything in the appraisal of authority of a decision (itself decided by a divided court, and since departed from in effect in an important series of cases), it has been impressively arrayed against this decision. If ever an opinion has been subjected to the weightiest professional criticism, it is the opinion in the *Lochner* case. Judge Andrew Bruce, Professor Ernst Freund, Judge Learned Hand, Professor Roscoe Pound—to mention no others—surely speak with high competence upon this subject. Nevertheless, the body of persuasive authority which their writings present was not brought to the Court's attention and failed to be considered in the disposition of the case.<sup>1</sup>

The circumstances which resulted in this decision reveal anew a situation of far-reaching importance. For it affects the very bases on which constitutional decisions are reached and therefore affects vitally the most sensitive point of contact between the courts and the people. The statute under discussion may well have been of no particular social import. The decision which nullified it, one may be sure, offers no intrinsic obstruction to needed legislation and in itself has merely ephemeral vitality. But, unfortunately, the evil that decisions do lives after them. Such a decision deeply impairs that public confidence upon which the healthy exercise of judicial power must rest.

Under the present-day stress of judicial work it is inevitable that courts, on the whole, can only decide specific cases as presented to

<sup>1</sup>A. A. Bruce, "The Illinois Ten Hour Labor Law for Women," *Michigan Law Review*, Vol. VIII, p. 1; G. S. Corwin, "The Supreme Court and the Fourteenth Amendment," *Michigan Law Review*, Vol. VII, p. 643; Ernst Freund, "Limitation of Hours of Labor and the Federal Supreme Court," *Green Bag*, Vol. XVII, p. 411, "Constitutional Limitations and Labor Legislation," *Illinois Law Review*, Vol. IV, p. 609; L. N. Greeley, "The Changing Attitude of the Courts toward Social Legislation," *Illinois Law Review*, Vol. V, p. 222; Learned Hand, "Due Process of Law and the Eight Hour Day," *Harvard Law Review*, Vol. XXI, p. 495; Sir Frederick Pollock, "The New York Labor Law and the Fourteenth Amendment," *Law Quarterly Review*, Vol. XXI, p. 211; Roscoe Pound, "Liberty of Contract," *Yale Law Journal*, Vol. XVIII, p. 480. Cf. Mr. Wigmore's comment on "The Qualities of Current Judicial Decisions," *Illinois Law Review*, Vol. IX, pp. 529, 530-531.

But see *Atkins v. Grey Eagle Coal Co.*, 84 S. E. 906 (1915), where the Court of Appeals of West Virginia sustained a truck act, in effect overruling the decision in *State v. Goodwill*, 33 W. Va. 179 (1889), and cited among its authorities Professor Pound's article "Liberty of Contract," *Yale Law Journal*, Vol. XVIII, p. 480 (see above, Chapter XXXVII).

them.<sup>1</sup> In other words, the substantial dependence upon the facts and briefs presented by counsel throws the decision of the courts largely upon those chances which determine the selection of counsel. These are, of course, necessary human drawbacks, and the practice works out well enough in controversies where purely individual interests are represented by counsel. This is not the situation in cases such as the one before the Massachusetts court. The issue submitted to the Court in fact was the issue as determined by the District Attorney of Worcester and counsel for the Boston and Maine Railroad. In truth, the issue was between the court and the legislature. In such a case either the legislative judgment should be sustained if there is "no means of judicial determination" that the legislature is indisputably wrong,<sup>2</sup> or the court should demand that the legislative judgment be supported by available proof.<sup>3</sup> It would seem clear that courts have inherent power to accomplish this by indicating the kind of argument needed to reach a just result or even by calling for argument from members of the bar—officers of the court—of particular equipment to assist in a given problem.<sup>4</sup> If legislation be necessary, New York furnishes an example in its recent enactment authorizing the courts to request the attendance of the attorney-general in support of an act of the legislature when its constitutionality is brought into question.<sup>5</sup>

These, after all, are only expedients. Fundamental is the need that the profession realize the true nature of the issues involved in these constitutional questions and the limited scope of the reviewing power of the courts.<sup>6</sup> With the recognition that these questions raise, substantially, disputed questions of fact must come the invention

<sup>1</sup> See Mr. Justice Swayze in "The Growing Law," *Yale Law Journal*, Vol. XX, pp. 1, 18-19. *People v. Schweinler Press*, 214 N. Y. 395, 411, 108 N. E. 639, 643 (1915).

<sup>2</sup> *Hadacheck v. Sebastian*, 239 U. S. 394, 413 (1915); *Price v. Illinois*, 238 U. S. 446, 452 (1915).

<sup>3</sup> Professor Ernst Freund, "Constitutional Limitations and Labor Legislation," *Illinois Law Review*, Vol. IV, pp. 609, 622.

<sup>4</sup> It is interesting to note that the chief arguments in the series of cases beginning with the Muller case were made by an *amicus curiae*, Mr. Louis D. Brandeis, in behalf of the National Consumers' League.

<sup>5</sup> New York Laws, 1913, chap. 442, p. 919.

<sup>6</sup> See *Harvard Law Review*, Vol. XXVIII, p. 790.

of some machinery by which knowledge of the facts, which are the foundation of the legal judgment, may be at the service of the courts as a regular form of the judicial process. This need has been voiced alike by jurists and judges.<sup>1</sup> Once the need shall be felt as the common longing of the profession, the inventive powers of our law will find the means for its satisfaction.

FELIX FRANKFURTER

HARVARD LAW SCHOOL

<sup>1</sup>Professor Roscoe Pound, in "Legislation as a Social Function," Publications American Sociological Society, Vol. VII, pp. 148, 161, says: "In the immediate past the social facts required for the exercise of the judicial function of lawmaking have been arrived at by means which may fairly be called mechanical. It is not one of the least problems of the sociological jurist to discover a rational mode of advising the court of facts of which it is supposed to take judicial notice." So (in dealing with a somewhat similar problem) Judge Learned Hand, in *Parke Davis & Co. v. Mulford & Co.*, 189 Fed. 95, 115: "How long we shall continue to blunder along without the aid of unpartisan and authoritative scientific assistance in the administration of justice, no one knows; but all fair persons not conventionalized by provincial legal habits of mind ought, I should think, unite to effect some such advance." Cf. also *Steenerson v. Great Northern Ry.*, 69 Minn. 353, 377, 72 N. W. 713, 716 (1897).

## XXXIX

### COLLECTIVE BARGAINING BEFORE THE SUPREME COURT<sup>1</sup>

IN THREE important cases a majority of the United States Supreme Court has thwarted efforts of labor unions to increase their numbers. In all three there was vigorous dissent. All three were opposed to the judgment of the court below. The first two found statutes wanting in the requirements of due process of law. *Adair v. United States*<sup>2</sup> annulled an act of Congress which prohibited interstate carriers from discharging an employee because of his membership in a labor union. *Coppage v. Kansas*<sup>3</sup> declared invalid a state law which forbade any employer to require of employees or of persons seeking employment an agreement not to become or remain a member of a labor union. The third decision is *Hitchman Coal and Coke Company v. Mitchell et al.*,<sup>4</sup> handed down last December. It deals with a situation created by the type of agreement which Kansas sought unsuccessfully to forbid. Officers of a labor union were restrained by injunction from securing secret promises to join the union from employees who had agreed to relinquish their employment in case they became members.

Each of these decisions was rendered in the name of freedom and liberty. But since each dealt with conflicting interests, each necessarily involved interfering with liberty as well as protecting it. The majority judges of the Supreme Court must have thought that the liberty they safeguarded was for some reason entitled to more consideration than the liberty they curtailed. And the minority and the judges below must have held contrary views. The importance of the decisions and of the court which rendered them may make it profitable to review the various opinions and try to arrange the controlling

<sup>1</sup>From *Political Science Quarterly*, Vol. XXXIII (1918), pp. 396-429.

<sup>2</sup>208 U. S. 161 (1908).

<sup>3</sup>236 U. S. 1 (1915).

<sup>4</sup>245 U. S. 232 (1917).

reasons for the divergent views. In so far as the opinions do not lend themselves to this purpose an endeavor will be made to indicate the fact. It not infrequently happens that a judicial opinion, like the arguments of counsel, starts from a selected premise which has in it the seeds of a desired result, and neglects to weigh that premise in even scales against competing premises which are equally significant but which bear other fruit.

Only four of the judges sat in all three cases. Of these Chief Justice White was consistently with the majority, and Mr. Justice Holmes with the minority. Mr. Justice McKenna was with the majority in the *Coppage* case and the *Hitchman* case, and with the minority in the *Adair* case. Mr. Justice Day dissented in the *Coppage* case and concurred in the other two. Justices Pitney, Van Devanter and McReynolds sat in the *Coppage* case and the *Hitchman* case and concurred in both. With them in the *Coppage* case was Mr. Justice Lamar; against them, Mr. Justice Hughes. Chief Justice Fuller and Justices Harlan, Peckham, and Brewer completed the majority in the *Adair* case; and Justices Brandeis and Clarke, the minority in the *Hitchman* case.

# I

The *Adair* case involved no dispute as to the facts, as the respondent by demurring to the indictment confessed that he had discharged an employee of an interstate railroad because of his membership in a labor union. The sole issue before the Court was the constitutionality of the statute forbidding such discharge. And the opinion of Mr. Justice Harlan maintained its unconstitutionality by asserting it.

*Adair* was an agent of the carrier. It was his right, says the learned justice, "and that right inhered in his personal liberty, and was also a right of property, to serve his employer as best he could, so long as he did nothing that was reasonably forbidden by law as injurious to the public interests." This seems a prelude to a consideration of the question of reasonableness. But we are not thus favored. Instead, we are informed again that "it was the right of the defendant to prescribe the terms upon which the services of *Coppage* [the employee] would be accepted, and it was the right of *Coppage* to become or not, as he chose, an employee of the railroad company upon the terms offered him."



This describes the legal situation before the passage of the statute. The parties were at liberty to bargain as they pleased about the affiliation of the employee with a union. But what we need to know is why the legal situation created or sanctioned by the common law cannot be changed by statute. We do not gain light on this point from any recital of the rights of the parties at common law, however oft repeated. Mr. Justice Harlan quotes a statement from Cooley that "it is a part of every man's civil rights that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice, or malice." But this is from a treatise on torts, and is evidently intended to mean that a man is not liable in tort for refusing to hire another or to work for another. It does not throw light on the question whether a new statutory arrangement is reasonable enough to be constitutional.

The succeeding paragraph in the opinion takes us no further in our quest. It cites *Lochner v. New York*,<sup>1</sup> and says that all the Court were agreed "as to the general proposition that there is a liberty of contract that cannot be unreasonably interfered with by legislation." Next follows the concession that the "right of liberty" is subject "to such reasonable restraints as the common good or general welfare may require." But this is succeeded not by a discussion of the question of reasonableness but by a neglect of it. Note the significant silence on the controlling issue: "... it is not within the functions of government—at least in the absence of contract between the parties—to compel any person, in the course of his business, and against his will, to accept or retain the personal services of another." After reiterating again the common-law rights of the employer and of the employee the opinion continues:

In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land.

There is more to the same effect. Summing it up, the statute is unconstitutional because it is unconstitutional.

It is not surprising that such an avoidance of the question of reasonableness prompts Mr. Justice McKenna to open his dissent

<sup>1</sup> 198 U. S. 45 (1905).

by saying, "The opinion of the Court proceeds upon somewhat narrow lines and either omits or does not give adequate prominence to the considerations which, I think, are determinative of the questions in the case." And later he suggests that an inquiry be made as to the purpose of the legislation "without beating about in the abstract."

This purpose Mr. Justice McKenna finds in the other provisions of the statute setting forth a plan of arbitration to prevent the strikes which are apt to arise from disputes between employers and employed. The unions among railroad employees, he says, exist and are a fact to be reckoned with. They create a unity among employees which may be an obstacle or an aid to arbitration. Congress sought to make this unity an aid in the settlement of labor disputes. The requirement is therefore in the public interest. It is imposed only on those engaged in a public-service enterprise, who are subject to control in the interest of the public. With the rights of those engaged in private business "we are not concerned."

Mr. Justice McKenna therefore finds the restriction on the liberty of the carriers a reasonable one, because, accepting conditions as they are, it will tend to prevent strikes. Mr. Justice Harlan dismisses this alleged justification in a somewhat roundabout way. He enters upon the question in order to discover whether the act is a regulation of interstate commerce. This is in response to some argument which he calls a suggestion that the act "can be referred to the power of Congress to regulate interstate commerce, without regard to any question of personal liberty or right of property under the Fifth Amendment." If the argument was put in this way, it confused two distinct questions. The opinion recognizes this when it says later that the power over commerce "cannot be exerted in violation of any fundamental right secured by other provisions of the Constitution." And if the act is not a regulation of interstate commerce it is unconstitutional, even if it does not also violate the Fifth Amendment. So that the majority, by holding that the objects of the statute are not within the purview of the commerce power, avoids explicit analysis of the reasons adduced by the minority for the reasonableness of its interference with liberty.

Mr. Justice Harlan prefaces his consideration of the commerce question by saying:

Manifestly, any rule prescribed for the conduct of interstate commerce, in order to be within the competency of Congress under its power to regulate commerce among the states, must have some real or substantial relation to or connection with the commerce regulated.

Then follows the rhetorical question, "But what possible legal or logical connection is there between an employee's membership in a labor organization and the carrying on of interstate commerce?" In first analysis, of course, the connection is factual. Whether it is also logical depends upon the logician; whether it is legal, upon the judge. Mr. Justice Harlan finds no link between labor unions and commerce, because "it is the employee as a man, and not as a member of a labor organization, who labors in the service of an interstate carrier." "Surely," he says, "those associations, as labor organizations, have nothing to do with interstate commerce."<sup>1</sup> The argument to the contrary he regards as based upon the assumption that "members of labor organizations would, by illegal or violent measures, interrupt or impair the freedom of commerce among the states." And of such assumptions he says: "We will not indulge in any such conjectures, nor make them, in whole or in part, the basis of our decision. We could not do so consistently with the respect due to a coördinate department of the government."

Mr. Justice McKenna's respect for Congress takes a different form. He sees that the power of labor unions "may be effectively exercised without violence or illegality," and he quotes from a report of the Senate Committee to show that the legislation was based not on conjecture but on experience. Of the argument of the majority he says, "Neither the supposition nor the disrespect is necessary, and,

<sup>1</sup> It is interesting to compare a statement of Mr. Justice Pitney on behalf of the majority in the *Coppage* case, in which he says that "it cannot be judicially declared that membership in such an organization has no relation to a member's duty to his employer" (236 U.S. 1, 19). In the *Coppage* case it was the argument in favor of the statute which urged that "membership in a labor organization is the 'personal and private affair' of the employee."

In sustaining the Adamson Law in *Wilson v. New*, 243 U.S. 332 (1917), a majority of the Supreme Court in effect discountenanced the application of the commerce clause adopted by the majority in the *Adair* case.

it may be urged, they are no more invidious than to impute to Congress a careless or deliberate or purposeless violation of the constitutional rights of the carriers."

Plainly Mr. Justice Harlan avoids due consideration of the justifications for the restraint imposed on the carriers. But Mr. Justice McKenna also fails to give due weight to the burden of that restraint upon them. The act, he says, restrains nothing "which is of any material interest to the carrier." He assumes that the discharge of an employee because of membership in a union is "the exercise of mere whim or caprice," or at any rate that it may be, and that "this is the liberty which is attempted to be vindicated as the constitutional right of the carrier." And on this assumption he comments eloquently: "Liberty is an attractive theme, but the liberty which is exercised in sheer antipathy does not plead strongly for recognition."

Mr. Justice Holmes looks deeper. In a separate dissent he says that "the section is, in substance, a very limited interference with the freedom of contract, no more. It does not require the carriers to employ anyone. It does not forbid them to refuse to employ anyone, for any reason they deem good." And he puts his finger on the artificiality of the individualistic approach to the problem by adding, ". . . even where the notion of a choice of persons is a fiction and wholesale employment is necessary upon general principles that it might be proper to control." The statute, he finds, "simply prohibits the more powerful party to exact certain undertakings, or to threaten dismissal or unjustly discriminate on certain grounds against those already employed." If there is believed to be an important ground for the restraint, "the Constitution does not forbid it, whether this Court agrees or disagrees with the policy pursued." Mr. Justice Holmes does not confine his sanction to the object of preventing strikes. Though he thinks that laboring men are apt to attribute to unions advantages "that really are due to economic conditions of a wider and deeper kind," he says that he "could not pronounce it unwarranted if Congress should decide that to foster a strong union was for the best interest, not only of the men, but of the railroads and the country at large." And his conclusion, which he puts at the beginning of his opinion, is stated as follows: "I also think that the statute is constitutional, and, but for the decision of my brethren, I should have felt pretty clear about it."

So much for the arguments of the judges. Mr. Justice Holmes sees the issue as one of policy which it is for Congress to decide. The majority find some eternal right of the carrier to be left alone, against which Congress beats in vain. They build this right on the common-law right of the carrier to be immune from damages if it dismissed an employee because he was a member of a union. But this common-law right was a judicial creation with respect to an issue between man and man. The issue in the *Adair* case is one between man and government. The new right of the carrier discovered by the *Adair* case is wholly different from that which it had at common law. An immunity against an individual has been enlarged into an immunity against the government. Yet the Court seems to think that it is merely protecting an old right and not creating a new one. Thus it avoids giving any substantial reason for its decision.

The majority recognizes that the issue before the Court is one of reasonableness. The merit of its opinion depends, therefore, upon its discussion of that issue. Legislatures are fortunate in not being called upon to give reasons for the law they make. Courts are under a duty to give weighty and specific reasons before they unmake the law made by the legislature. They may not inappropriately be held subject to the canon that the vigorous assertion of a conclusion is not the giving of a reason for it. Judged by this canon, the majority opinion in the *Adair* case is sadly wanting. Its declaration that it is not within the functions of government to compel a person against his will to retain the services of another is beside the point, because Congress did not compel the carrier to retain the services of any of its employees. There is a wide difference between prohibiting discharge for a single, specified reason and prohibiting discharge altogether. The Court cannot convince us of the unreasonableness of what Congress did by telling us that it is not within the functions of government to do something much more drastic. It does not enlighten us on the question of reasonableness by the rhetorical fiat that "the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with liberty of contract which no government can legally justify in a free land." Yet it is on this fiat that the decision rests, and not on anything that can be dignified with the title of a reason.

## II

This question of the disturbance of the equality between employer and employed receives further discussion in the opinions in the *Coppage* case. The majority in that case insist that a statute which forbids an employer to require of a laborer, as a condition of obtaining or remaining in employment, an agreement not to become or to remain a member of a labor union is as vicious as one which forbids dismissal because of membership in a union. If the employer must remain free to discharge an employee for any reason that seems to him good, he must be permitted to announce in advance what reasons he will deem sufficient for discharge. "Granted the equal freedom of both parties to the contract of employment, has not each party the right to stipulate upon what terms only he will consent to the inception, or to the continuance, of that relationship?"

Mr. Justice Holmes, in a brief dissent, did not seek to distinguish the problem before the Court from that involved in the *Adair* case. He thought that the *Adair* case should be overruled. But Mr. Justice Day, who concurred in the *Adair* case, distinguishes it from the case in hand, in which he dissents. His reasons are as follows:

There is a real, and not a fanciful, distinction between the exercise of the right to discharge at will and the imposition of a requirement that the employee, as a condition of employment, shall make a particular agreement to forego a legal right. The *agreement* may be, or may be declared to be, against public policy, although the right of discharge remains. When a man is discharged, the employer exercises his right to declare such action necessary because of the exigencies of his business, or as the result of his judgment for other reasons sufficient to himself. When he makes a stipulation of the character here involved essential to future employment, he is not exercising a right to discharge, and may not wish to discharge the employee when, at a subsequent time, the prohibited act is done. What is in fact accomplished is that the one engaging to work, who may wish to preserve an independent right of action, as a condition of employment is coerced to the signing of such an agreement against his will, perhaps impelled by the necessities of his situation.

In illustration of his point Mr. Justice Day refers to such possible stipulations as that a person seeking employment shall agree not to resort to the courts for redress in case of disagreement with his employer, or not to become a member of the National Guard, or not to

affiliate with a particular political party. The requirement of such agreements in advance, he insists, is the exercise of a wholly different liberty from those of not employing or of discharging after employing.

There is a difference, of course. But whether the difference is sufficient to entitle one who dissents in the *Coppage* case to concur in the *Adair* case is more difficult to determine. Mr. Justice Day does not establish the importance of his distinction by saying that the Kansas statute "reaches not only the employed, but as well, one seeking employment," who "by signing such agreements" is "deprived of the right of free choice as to his future conduct." So long as the employee remains legally free to quit his employment at any time, he may always choose between joining a union or keeping his job. So far as we can reason about it the agreement would seem to have no wider direct results as between employer and employee than would ensue from the announcement by the employer that he ran and would continue to run a closed nonunion shop. But psychological considerations may enter in to make a difference. Evidently the employers think that the securing of the individual agreements at the time of hiring is an aid in their endeavor to avert the pressure of collective bargaining on the part of the men. And, as will appear later from the *Hitchman* case, the existence of a contract between employer and employed gives a weapon to the former against third parties who seek to unite employees in a demand that they be retained as union men. The majority, therefore, do not find in the *Adair* case a complete precedent for the *Coppage* case. Nevertheless, the major issue in both cases is whether the legislature may aid laborers in their efforts to secure collective bargaining.

This evidently is the way Mr. Justice Holmes views it. In a dissent which takes only a paragraph he says:

In present conditions a workman not unnaturally may believe that only by belonging to a union can he secure a contract that shall be fair to him. If that belief, whether right or wrong, may be held by a reasonable man, it seems to me that it may be enforced by law in order to establish the equality of position between the parties in which liberty of contract begins. Whether in the long run it is wise for the workingmen to enact legislation of this sort is not my concern, but I am strongly of opinion that there is nothing in the Constitution of the United States to prevent it. . . .

Thus Mr. Justice Holmes regards the statute as a promoter of liberty and equality. The majority regard it as an interference with both. This is not to say that they disagree as to the results the law sought to produce. Their difference relates to the characterization of those results. It goes to the essence of what each means by liberty and equality.

To the minority liberty and equality mean something actual and concrete. Mr. Justice Day says of the Kansas statute, "I think that the Act now under consideration, and kindred ones, are intended to promote the same liberty of action for the employee, as the employer confessedly enjoys." It is a step towards making them equal in bargaining power. It prohibits "coercive attempts" on the part of employers to deprive employees "of the free right of exercising privileges which are theirs within the law." To the argument of the majority that there is no element of coercion in offering an employee a choice between his union and his job, Mr. Justice Day says that this neglects the facts as to the relative positions of employer and employed. The choice legally open to the employee is not actually open to him. He cannot enjoy his legal right to be a member of a union if he is hampered thereby in working for his living in the occupation for which he is best fitted.

To this the majority reply that "constitutional freedom of contract does not mean that a party is to be as free after making a contract as before." By agreeing to work, the employee yields the enjoyment of his legal right to use his time as he pleases. "Freedom of contract, from the very nature of the thing, can be enjoyed only by being exercised; and each particular exercise of it involves making an engagement which, if fulfilled, prevents for the time any inconsistent course of conduct." While an individual has a legal right to join a union, "he has no inherent right to do this and still remain in the employ of one who is unwilling to employ a union man."

This, of course, is but to reiterate the common-law situation. The statute meant to give the employee a freedom he did not have at common law.<sup>1</sup> The minority says that his ancient legal liberty

<sup>1</sup>The statute may be viewed as a declaration that the legal right to be a member of a union shall not be subject to sale. Common law and equity are familiar with restrictive covenants on one's future freedom of action which are denied jural recognition. Restraints of one's future conduct connected with earning a livelihood have always been outlawed when regarded as unreasonable.



was not an actual liberty, and that it is within the power of the state to add to his actual liberty. In so doing it cuts down the legal liberty of the employer, but it leaves him with an actual liberty which, by reason of his economic superiority, is equal to the actual liberty of the employee.

This discussion of liberty is of value only as it leads to the issue of equality. Of course no one has actual liberty to use all his legal liberty. He must pick and choose. Everyone is subject to some degree of economic coercion. Mr. Justice Day's statement that the Kansas statute "has for its avowed purpose the protection of the exercise of a legal right" to join a union is true enough so far as it goes. But it has the same incompleteness which marks the argument of the majority that the statute interferes with the legal right of employers to prescribe the conditions on which they will make contracts. The protection of the common-law right of the one is gained only by limiting the common-law right of the other. All argument is vain which confines itself to the elaboration of the effect of the statute on one of these rights, disregarding its effect on the other.

The common law left the employee free to join a union. It left the employer free to decline to hire members of a union. In some upper conceptual chamber these two common-law liberties may dwell together in amity. In actual life they conflict. The conflict had to be resolved in the course of a struggle in which the public interests suffered. If the state is to step in to aid the public interest by reducing the friction between the parties, it must do something more than to sanction what already exists. The minority is correct in its position that the state has protected the exercise of the legal liberty of the employee. The majority is correct in its assertion that the state has interfered with a previous legal liberty of employers. The issue is whether the former is a justification for the latter.

The majority, in seeking for possible justifications, find none. Other interferences with liberty which have been judicially sanctioned have been "fairly deemed necessary to secure some object directly affecting the public welfare." But of the statute in question, putting aside the question of coercion, Mr. Justice Pitney says:

. . . there is no object or purpose, expressed or implied, that is claimed to have reference to health, safety, morals, or public welfare,

beyond the supposed desirability of leveling inequalities of fortune by depriving one who has property of some part of what is characterized as his "financial independence." In short, an interference with the normal exercise of personal liberty and property rights is the primary object of the statute, and not an incident to the advancement of the general welfare.

This is to say that the object of the statute is to promote equality of actual opportunity, solely for the sake of that equality—a result which could not promote the general welfare. Moreover, the Constitution is regarded as having been designed to prevent the legislature from promoting equality of opportunity. Inequality is the necessary result of the institution of private property. "Wherever the right of private property exists there must and will be inequalities of fortune." It is "impossible to uphold freedom of contract and the right of private property without at the same time recognizing as legitimate those inequalities of fortune that are the necessary result of the exercise of those rights." Since a state may not cut down the rights of private property directly, it "may not do so indirectly, as by declaring in effect that the public good requires the removal of those inequalities that are but the normal and inevitable result of their exercise, and then invoking the police power in order to remove the inequalities, without other object in view."

Constitutional liberty of contract, therefore, is not "freedom of action." It is freedom from legislative interference with action. This is freedom for employer and employee alike, even though for the employee it is but the wraith of genuine freedom. Equality between employer and employee is not approximate evenness of bargaining position. It exists only when both are equally let alone by the legislature. The state may not, as Mr. Justice Holmes contends, "establish the equality of position in which liberty of contract begins." It must not interfere with that inequality of position which enables the one with superior position to drive a hard bargain. The owner of property must be guaranteed an advantage in all his dealings with those who have less than he. In the words of Mr. Justice Pitney:

Indeed, a little reflection will show that wherever the right of private property and the right of free contract coexist, each party

when contracting is inevitably more or less influenced by the question whether he has much property or little or none; for the contract is made to the very end that each may gain something he needs or desires more urgently than that which he proposes to give in exchange.

To him that hath shall be given protection not only of that which he hath but of every leverage which his possessions give him in acquiring more. To him that hath not shall be given the solace that he is free and unrestrained by law as to the bargains he shall make. He may be influenced as much as he likes by the fact that he has little property or none. He lives in a land of freedom and equality.

This is where we should arrive by uniting an absolute conception of liberty of contract with an absolute conception of property, and then regarding the marriage as indissoluble. Of course no one means to carry the sanctity of inequality so far. Otherwise all antitrust laws would be unconstitutional. For they deprive those who have superior position from using that position as a leverage to improve it still further. They promote actual equality by restraining the strong for the sake of the weak. It is quite as nearly correct to say they have no other object in view as it is to say that the Kansas statute has no other object in view. Whether in either case "an interference with the normal exercise of personal liberty and property rights" is "the primary object of the statute" or is "an incident to the advancement of the general welfare" depends upon a judgment whether the primary results of the interference conduce to the general welfare. It is equally possible arbitrarily to stigmatize either interference as a primary object and not a means to something else. Each necessarily results in something else. Each involves "the supposed desirability" of "leveling inequalities of fortune," in the sense that each seeks to enhance the purchasing power of a large group of the public to the consequent diminution of the purchasing power of another group. Both deal with the distribution of what is to be created in the future. Neither involves redivision of commodities now possessed. Mr. Justice Day draws the parallel as follows:

Wherein is the right of the employer to insert this stipulation in the agreement any more sacred than his right to keep up prices? He may think it quite as essential to his "financial independence," and so in truth it may be if he alone is to be considered. But it is

too late to deny that the legislative power reaches such a case. It would be difficult to select any subject more intimately related to good order and the security of the community than that under consideration—whether one takes the view that labor organizations are advantageous or the reverse. It is certainly as much a matter for legislative consideration and action as contracts in restraint of trade.

Good order and the security of the community—these are the justifications which Mr. Justice Day and Mr. Justice Hughes find for the statute. This is to be attained by preventing what is in fact coercion, though it be a kind of coercion not forbidden by the common law. It is to be gained by substituting an actual equality for an artificial equality, or, as Mr. Justice Holmes puts it, by establishing the equality of position between the parties in which liberty of contract begins. "Good order and the security of the community" are certainly worthy objects of legislative endeavor. But they are also vague phrases to conjure with. They are slogans rather than reasons. They help no more in debate than does the phrase "general welfare." Both the majority and the minority in the *Coppage* case agree that if the statute under consideration promotes the general welfare, it is constitutional. The majority see that assistance to collective bargaining has the evil of leveling inequality, and they see nothing more. The minority hold inequality less precious. And so we are left with only the disagreement as to what constitutes the general welfare and what is a legitimate promotion of that welfare.

Those who are disheartened at finding that all the competing reasoning, or arguing, leads but to a blind alley may find sympathy, if not solace, in a statement made by Mr. Justice Holmes when chief justice of Massachusetts. In his dissenting opinion in *Vegalahn v. Guntner*,<sup>1</sup> which he incorporates by reference in his dissent in the *Coppage* case, he says:

It is on the question of what shall amount to a justification, and more especially on the nature of the considerations which really determine or ought to determine the answer to that question, that judicial reasoning seems to me often to be inadequate. The true grounds of decision are considerations of policy and of social advantage, and it is vain to suppose that solutions can be attained merely by logic and general propositions of law which nobody disputes. Propositions as to public policy rarely are unanimously accepted, and still more

<sup>1</sup> 167 Mass. 92 (1896).

rarely, if ever, are capable of unanswerable proof. They require a special training to enable anyone even to form an intelligent opinion about them.<sup>1</sup>

If the opinions in the *Coppage* case do not deal satisfactorily with the determining issue, they are not alone in their deficiencies. Like many other judicial opinions they use methods unsuited to the task in hand. But though they give us little or no guidance in forming an intelligent judgment on the merits of the legislation under review, they afford interesting evidence of the methods by which constitutional limitations are actually interpreted and applied.

<sup>1</sup>In the opinion from which this is taken Chief Justice Holmes contended that one group of laborers were justified in promoting their own advantage by seeking to dissuade another group from continuing in the service of an employer at the existing scale of wages. In *Plant v. Woods*, 176 Mass. 492 (1900), to which Mr. Justice Holmes also refers in his dissent in the *Coppage* case, he contended that members of one labor union were justified in seeking to compel members of another union to desert it and join with them, and as a means to this end to threaten strikes and boycotts. His approach to the problems may be indicated by two quotations. In the *Guntner* case he says: "I have seen the suggestion made that the conflict between employers and employed was not competition. But I venture to assume that none of my brethren would rely on that suggestion. If the policy on which our law is founded is too narrowly expressed in the term 'free competition,' we may substitute 'free struggle for life.' Certainly the policy is not limited to struggles between persons of the same class, competing for the same end. It applies to all conflicts of temporal interests." And he closes his dissent in *Plant v. Woods* as follows: "Although this is not the place for extended economic discussion, and although the law may not always reach ultimate economic conceptions, I think it well to add that I cherish no illusions as to the meaning and effect of strikes. While I think the strike a lawful instrument in the universal struggle of life, I think it pure phantasy to suppose that there is a body of capital of which labor as a whole secures a larger share by that means. The annual product, subject to an infinitesimal deduction for the luxuries of the few, is directed to consumption by the multitude, and is consumed by the multitude, always. Organization and strikes may get a larger share for the members of an organization, but, if they do, they get it at the expense of the less organized and less powerful portion of the laboring mass. They do not create something out of nothing. It is only by divesting our minds of questions of ownership and other machinery of distribution, and by looking solely at the question of consumption—asking ourselves what is the annual product, who consumes it, and what changes would or could we make—that we can keep in the world of realities. But, subject to the qualifications which I have expressed, I think it lawful for a body of workmen to try by combination to get more than they are now getting, although they do it at the expense of their fellows, and to that end to strengthen their union by the boycott and the strike."

The Kansas statute deprived employers of a liberty which they were allowed by common law. But the Constitution does not unqualifiedly forbid the taking of liberty. It forbids it only when the taking is without due process of law. And the meaning of due process is not hinted at. It has been left for the courts to work out. In so far as the clause has become a criterion of the validity of legislative objects, the issue is always what constitutes an adequate justification for the taking in question. It is not logic nor the language of the Constitution which declares that the promotion of the liberty of the laborer to be a member of a union is not a legitimate legislative object. It is a judgment, conscious or unconscious, on a question of policy. The issue in the *Coppage* case was one of policy, and all the competing interpretations of the terms "liberty" and "equality" cannot disguise the fact.

In deciding constitutional questions which turn on issues of policy, courts are under a recognized duty to exclude, so far as is humanly possible, their personal preferences and aversions and to sustain a statute unless they find it clearly condemned by the Constitution. It is idle to say that courts never substitute their views of policy for those of the legislature, for minorities have too often charged majorities with such substitution. But it is to be assumed that such majorities firmly believe their views of policy embedded in the Constitution and drawn therefrom. The assumption is made easier by the fact that not a few of us identify our ideas of what is good and fair with something greater than ourselves. The identification is usually incapable of rigorous proof. And so it is with the determination of many constitutional questions by the Supreme Court. The instrument appealed to for an answer to the particular question is silent thereon. The policy which the judges refer to the Constitution is connected therewith only by inference or conjecture. And from the processes of judicial inference it is often difficult for the judge to exclude his individual predilections.

The inadequacy of the reasoning in many constitutional opinions, to which Mr. Justice Holmes refers, drives those who seek to understand the actual working of our institutions of government to look beyond that reasoning. The explanation of the decisions not infrequently depends in part upon the social philosophy of the judges and in part upon their psychology. Some judges succeed fairly

easily in disregarding their personal views of policy and in sustaining statutes for which as legislators they would not have voted. Others find the task more difficult, possibly because their predilections are stronger, possibly because they are less conscious of the considerations that press to play a part in their decisions. Difficult as it is to tell just what weight these factors have in the development of our constitutional law, it is impossible to exclude them entirely. We know pretty clearly the contrast between Marshall and Taney. On some important questions it is not difficult to prophesy accurately in advance how the last three judges appointed to the bench will align themselves. With others the task is more difficult. But the fact that considerations which may influence decisions elude discovery does not negative their presence or their power. Whenever judicial opinions must be adjudged logically bankrupt, and the bankruptcy is recognized by dissenting colleagues, we may feel insecure in dismissing as unimportant the relation between the social outlook of legislators and the social outlook of judges.

### III

The majority opinions in the *Adair* case and the *Coppage* case set forth clear and definite ideas of liberty and of equality. It is of the essence of the liberty of employers that they be free to accept or reject employees for any reason they please. It is of the essence of the liberty of employees that they be free to join unions or to keep aloof from them. Equal freedom for employers and for employees is the watchword of the opinions. This freedom, however, is not freedom from economic pressure. It is freedom from legal restraint. Unions are lawful organizations, like churches, political parties, and the National Guard. But they are not entitled to the aid of the law in their efforts to increase their numbers. They must make their own way. But this they must be free to do, so far as the law is concerned, unless they adopt obnoxious methods. Leaving aside the question of methods, equality of legal right between employers and employed means the noninterference of the law in their struggles over collective bargaining. And this principle of equality of noninterference is so sacred that legislation cannot trespass upon it without running afoul of the restrictions set by due process.

From these views of policy which permeate the majority opinions in the two cases thus far considered we turn to the case of *Hitchman Coal and Coke Company v. Mitchell*.<sup>1</sup> The complainant ran a closed nonunion mine. Each employee was engaged under circumstances which the majority opinion states as follows :

Mr. Pickett, the mine superintendent, had charge of employing the men, then and afterwards, and to each one who applied for employment he explained the conditions, which were that while the company paid the wages demanded by the union and as much as anybody else, the mine was run nonunion and would continue so to run; that the company would not recognize the United Mine Workers of America; that if any man wanted to become a member of that union he was at liberty to do so; but he could not be a member of it and remain in the employ of the Hitchman Company; that if he worked for the company he would have to work as a nonunion man. To this each man employed gave his assent, understanding that while he worked for the company he must keep out of the union.

While this arrangement was in force officers of the U. M. W. A. visited the employees and solicited them to agree to join the union and to keep secret the fact of their so agreeing until such time as enough had agreed so that the officers of the union were ready to have the employer informed. Against these acts of solicitation an injunction was granted by the district court. After being reversed by the court of appeals, the decree of the district court was sustained by the Supreme Court,<sup>2</sup> with the exception of that part which restrained picketing and acts of violence. The exception was due to the fact that neither of these forms of interference had been attempted.

The injunction did not specifically forbid the defendants to persuade employees to promise to join the union and to keep the promise a secret. One important clause enjoined the defendants from attempting "to bring about the breaking by plaintiff's employees . . . of their contracts of service, known to the defendants

<sup>1</sup> 245 U.S. 232 (1917).

<sup>2</sup> The bill was filed October 24, 1907, and a temporary injunction granted. This was made final on January 18, 1913. The decree of the district court was reversed by the circuit court of appeals on June 1, 1914. A writ of *certiorari* was allowed by the Supreme Court, where the case was argued in March, 1916, reargued in December of that year, and decided a year later on December 10, 1917.



to exist, and especially from . . . enticing such employees . . . to leave plaintiff's service without plaintiff's consent." This is a strange conjunction. The employees could break their contracts only by not leaving plaintiff's employ after affiliating with the union. If they joined they were to depart, not only with plaintiff's consent but by its express requirement. They could not both break their contracts and leave without the plaintiff's consent.<sup>1</sup>

In so far as the injunction relates to enticing employees to break their contracts, it was not justified by the evidence unless the employees had agreed in form or in substance not to give secret promises to join the union. All that they had agreed to explicitly was to keep out of the union while they worked for the Company. Mr. Justice Brandeis says for the minority :

Until an employee actually joined the union he was not, under the contract, called upon to leave plaintiff's employ. There consequently would be no breach of contract until the employee both joined the union and failed to withdraw from plaintiff's employ. There was no evidence that any employee was persuaded to do that or that such a course was contemplated.

The majority do not seem to question the interpretation put upon the contract by the minority. But they insist that as thus interpreted it had been broken at defendants' solicitation. "In a court of equity . . . to induce men to agree to join is but a mode of inducing them to join." Those who agreed to join "were for all practical purposes, and therefore in the sight of equity, already members of the union, and it needed no formal ritual or taking of an oath to constitute them such." Thus a verbal understanding between the superintendent and each employee that "if a man wanted to become a member of that union he was at liberty to do so, but he could not

<sup>1</sup>This is plain not only from the evidence as to the understanding at the time of hiring but also from what actually happened at the Glendale mine, a concern owned by the same stockholders as the Hitchman and managed by Pickett, the superintendent also of the Hitchman. To quote from the majority opinion: "Pickett, the mine superintendent, had learned of only five men at the Glendale who were inclined to join Hughes's movement; but when these were asked to remain outside of the mine for a talk, fifteen other men waited with them, and upon being reminded that while the Company would not try to prevent them from becoming members of the union, they could not be members and at the same time work for the Glendale Company, they all accepted this as equivalent to a notice of discharge."

be a member of it and remain in the employ of the Hitchman Company" is broken when an employee gives to a stranger a legally unenforceable promise to join the union.

It may be doubted whether any such interpretation would have been given to the contract had the question of its meaning arisen in a dispute which involved only a single employee. What the plaintiff desired was to prevent its men from acting in concert. It had stipulated against one method of acting in concert, but had failed to cover all the possibilities. It is saved from its oversight by the decision of the majority as to what constituted a breach. But the decision on this point, if unwarranted, is material only to the particular litigation. The contract which the majority inferred for the plaintiff may be expressly made by other employers. They will then be protected by the Supreme Court against the kind of interference with their enjoyment of those contracts which the defendants in the Hitchman case ventured upon. We are more interested in the rule of law for which the Hitchman case stands than in the question whether it was correctly applied to the particular state of facts before the Court.

In order to know what this rule of law is, we must examine more fully the enterprise of the defendants. They were seeking not only to get plaintiff's employees to join their union but also to unionize the plaintiff's mine. This is not contested by the minority. What is meant by "unionizing the mine" is thus set forth in the dissenting opinion of Mr. Justice Brandeis:

The operator by the union agreement binds himself: (1) to employ only members of the union; (2) to negotiate with union officers instead of employees individually the scale of wages and the hours of work; (3) to treat with the duly constituted representatives of the union to settle disputes concerning the discharge of men and other controversies arising out of the employment.

The demand for such an agreement was to be made as soon as enough of plaintiff's employees had agreed to join the union to make it likely that the demand would meet with success. For such success collective action was important. To secure collective action defendants sought to conceal from plaintiff the number and names of the employees who indicated a willingness to join with them until they had won over enough men to "crack off."

This element of secrecy is made so much of in the opinion of the majority of the Court that a lawyerlike attitude towards the decision cannot regard it as a precedent on any situation where the element of secrecy is lacking. It was the concealment of the promise to join the union that made it possible for the majority to insist that the defendants were inducing the employees to break their contracts by continuing to work after they were really, though not formally, members of the union. And the concealment is also regarded as negating a possible justification for the acts of the defendants. Mr. Justice Pitney refers to it as follows:

There is no reason to doubt that it defendants had been actuated by a genuine desire to increase the membership of the union without unnecessary injury to the known rights of the plaintiff, they would have permitted their proselytes to withdraw from plaintiff's employ when and as they became affiliated with the union—as their contract of employment required them to do—and that in this event plaintiff would have been able to secure an adequate supply of nonunion men to take their places. It was with knowledge of this, and because of it, that defendants, through Hughes as their agent, caused the new members to remain at work in plaintiff's mine until a sufficient number of men should be persuaded to join so as to bring about a strike and render it difficult if not practically impossible for plaintiff to continue to exercise its undoubted legal and constitutional right to run its mine "nonunion."

It was one thing for plaintiff to find, from time to time, comparatively small numbers of men to take vacant places in a going mine, another and a much more difficult thing to find a complete gang of new men to start up a mine shut down by a strike, when there might be reasonable apprehension of violence at the hands of the strikers and their sympathizers.

Mr. Justice Pitney here gives countenance to the inference that he would have deemed it proper for the defendants to ask plaintiff's employees one by one to join, or to agree to join, the union, and then immediately to notify plaintiff and quit work, as their contracts bound them to do. This would not involve a strike, but merely the ending of the employment of the men one by one at the compulsion of the employer. The issue of the struggle would then depend upon the rapidity with which individuals could be secured for the union and the rapidity with which the employer could fill their places. But the situation in the case at bar was different. There

was an intention to bring about a strike, so called,<sup>1</sup> even if plaintiff should desire to retain the men who joined the union. There was what the majority regarded as an enticement to a breach of contract. It was with such a situation that the Court found it had to deal. To that situation its opinion and its judgment should be confined. This is not only required by sound lawyership but is also supported by a paragraph in which Mr. Justice Pitney sums up the conclusions reached :

Upon all the facts, we are constrained to hold that the purpose entertained by the defendants to bring about a strike at plaintiff's mine in order to compel plaintiff, through fear of financial loss, to consent to the unionization of its mine as the lesser evil, was an unlawful purpose, and that the methods resorted to by Hughes—the inducing of employees to unite with the union in an effort to subvert the system of employment at the mine by concerted breaches of the contracts of employment known to be in force there, not to mention misrepresentation, deceptive statements, and threats of pecuniary loss communicated by Hughes to the men—were unlawful and malicious methods, and not to be justified as a fair exercise of the right to increase the membership of the union.

The decision is thus made dependent “upon all the facts,” including the threat of a strike and the enticement to breaches of contract. The majority, in the passage quoted, imply that other acts of defendants might be “a fair exercise of the right to increase the membership of the union.” Earlier in the opinion Mr. Justice Pitney refers to

<sup>1</sup>Mr. Justice Brandeis also speaks of the intention to have the men “join the union together and strike—unless plaintiff consented to unionize the mine.” But the Company, according to its professions, was to insist that the men leave if they joined the union. On the case as presented by the plaintiff no strike would be necessary, or possible. The original employment at will would be ended by its own terms. The *status quo ante* would then be resumed. There would be no subsisting contractual relation between the employer and the members of the union. The issue would then relate to what kind of a new bargain would evolve out of the exercise of the respective liberties of employer and men. There might be a collective refusal on the part of the men to enter into a new agreement which did not include unionizing the mine. In practical effect this would not differ from a collective abandonment of employment against the wishes of the employer. But the word “strike” has a false color when used in this connection. The plaintiff concedes that the men are free to join the union at any time, but insists that if they do they must quit. If after that there is a deadlock, it is quite as fair to call the situation a lockout as to call it a strike. To call it a strike seems inconsistent with plaintiff's professed conception of the arrangement originally entered into.

"the right of workingmen to form unions, and to enlarge their membership by inviting other workingmen to join them" and says: "This right is freely conceded, provided the objects of the union be proper and legitimate, which we assume to be true, in a general sense, with respect to the union here in question." But then he adds:

The cardinal error of defendants' position lies in the assumption that the right is so absolute that it may be exercised under any circumstances and without any qualification; whereas in truth, like other rights that exist in civilized society, it must always be exercised with reasonable regard for the conflicting rights of others.

Here we have a recognition that the "rights" of employers and the "rights" of laborers conflict. The successful exercise of the "right" of members of the union to increase their numbers will interfere *pro tanto* with the successful exercise of the "right" of employers to run their mines nonunion. Yet both rights exist and are declared to be entitled to an equality of legal protection. Plainly, therefore, the majority give no satisfactory reason for their interference with the "right" of the defendants by declaring that the defendants were interfering with the "right" of the plaintiff. The defendants could exercise their right with respect to plaintiff's employees only by interfering with the conflicting right of the plaintiff. We may then dismiss as merely prefatory the numerous statements of Mr. Justice Pitney with respect to the right of the plaintiff to exclude union men from its employ, and to the interference with that right by the defendants. These statements have been subjected to a searching and illuminating analysis by Professor Walter W. Cook.<sup>1</sup> By the use of a somewhat elaborate verbal technic, which gives different terms to the different varieties of legal rights, Mr. Cook shows how Mr. Justice Pitney uses "right" now in one sense and now in another, thus unconsciously asserting a new proposition, and one as yet unproved, under the form of merely reiterating something firmly established. But in spite of these lapses in the argumentation the majority opinion, by entering upon the question whether defendants' interference with plaintiff's interests was justified, reaches the nub of the controversy.

<sup>1</sup>"Privileges of Labor Unions in the Struggle for Life," *Yale Law Journal*, Vol. XXVII (April, 1918), p. 779.

The minority concede that the defendant must show justification. They "were within their rights," says Mr. Justice Brandeis, "if, and only if, their interference with the relation of plaintiff to its employees was for justifiable cause." And the justification is then stated as follows:

The purpose of interfering was confessedly in order to strengthen the union, in the belief that thereby the condition of workmen engaged in mining would be improved; the bargaining power of the individual workingman was to be strengthened by collective bargaining; and collective bargaining was to be insured by obtaining the union agreement. It should not, at this day, be doubted that to induce workmen to leave or not to enter an employment, in order to advance such a purpose, is justifiable when the workmen are not bound by contract to remain in such employment.

But the majority insist that the end aimed at was not a justification for the interference. The defendants' activities, says Mr. Justice Pitney, "cannot be treated as a *bona fide* effort to enlarge the membership of the union." The reason given is in substance that it was an effort to do something more than to enlarge the union. It was an attempt to unionize the mine after the union was enlarged. But Mr. Justice Pitney says that "there is no evidence to show, nor can it be inferred, that defendants intended or desired to have the men at the mines join the union, unless they could organize the mines." Of course if they gained this end they would enlarge the union. And the enlargement of the union is always sought for some more concrete advantage than mere growth in numbers. The reason why there is any truth to the statement that the defendants did not wish plaintiff's employees to join the union unless the mine could be thereby unionized is that such unionization was deemed necessary in order to safeguard the interests of the men after they were in the union and to make it possible for them to remain in the union.

But Mr. Justice Pitney's analysis of the defendants' purposes, however faulty, indicates where he draws the line as to what constitutes an adequate justification. Union organizers can get men to join the union if they do not thereby interfere with the employer's "undoubted legal and constitutional right to run its mine 'nonunion.'" They may increase the union if they do it in such a way that an employer can readily continue to get nonunion laborers. But they

must not attempt to "alienate a sufficient number of the men to shut down the mine, to the end that the fear of losses through stoppage of operations might coerce plaintiff into 'recognizing the union' at the cost of its own independence." The purpose of organizing the mine is no justification. Where "unionizing the miners is but a step in the process of unionizing the mine" the plaintiff "is as much entitled to prevent the first step as the second, so far as its own employees are concerned, and to be protected against irreparable injury resulting from either." And the purpose of securing collective bargaining is not a justification for disturbing an employer unless the employer is willing to bargain that way. "Whatever may be the advantages of 'collective bargaining,' it is not bargaining at all, in any just sense, unless it is voluntary on both sides."

This irenic conception of the way buyers and sellers should bargain bespeaks a noble ideal, but one not yet fully realized in the coal regions. Collective bargaining is seldom, if ever, brought about because employers desire it above all other forms. It is brought about because employers prefer it to making no bargains at all. It is interesting that it is Mr. Justice Pitney who refers to the acts of the defendants as the "employment of coercive measures to secure a closed union shop through a collective agreement with the union." For it was Mr. Justice Pitney who reminded us in the *Coppage* case that it was not "coercion" to propose certain terms of employment which one has the right to propose. Now it is the minority who have to tell us that economic pressure is not coercion in a legal sense. As Mr. Justice Brandeis puts it:

The employer is free either to accept the agreement or the disadvantage. Indeed, the plaintiff's whole case is rested upon agreements secured under similar pressure of economic necessity or disadvantage. If it is coercion to threaten to strike unless plaintiff consents to a closed union shop, it is coercion also to threaten not to give one employment unless the applicant will consent to a closed nonunion shop. The employer may sign the union agreement for fear that labor may not be otherwise obtainable; the workman may sign the individual agreement, for fear that employment may not be otherwise obtainable. But such fear does not imply coercion in a legal sense.

But Mr. Justice Pitney takes a more idyllic view of the original nonunion agreement at the *Hitchman*. He speaks of the fact that

the defendants had plain notice "that the observance of this agreement was of great importance and value both to the plaintiff and to its men who had voluntarily made the agreement and desired to continue working under it." And again he says that the plaintiff "established the mine on a nonunion basis, with the unanimous approval of its employees—in fact upon their suggestion—and under a mutual agreement assented to by every employee, that plaintiff would continue to run its mine nonunion. . . ." This "suggestion" of the employees is earlier detailed by Mr. Justice Pitney as follows:

About the first of June a self-appointed committee of employees called upon plaintiff's president, stated in substance that they could not remain longer on strike because they were not receiving benefits from the union, and asked upon what terms they could return to work. They were told that they could come back, but not as members of the United Mine Workers of America; that thenceforward the mine would be run on a nonunion basis, and the company would deal with each man individually. They assented to this and returned to work on a nonunion basis.

A further side light is thrown on the situation by the account in the majority opinion of the activities of the union organizer: "He prophesied, in such a way that ignorant, foreign-born miners, such as he was addressing, naturally might believe that he was speaking with knowledge. . . ." Ignorant and gullible were the men who voluntarily made the nonunion agreement with their employer and desired to continue working under it.

Closely connected with Mr. Justice Pitney's change of view as to what constitutes "coercion" is his shift with respect to "independence." In the *Hitchman* case he speaks of the defendants' action as being directed "to the end that the fear of losses through stoppage of operations might coerce plaintiff into 'recognizing the union' at the cost of its own independence." But in the *Coppage* case he did not recognize any loss of independence by the laborers who had to agree to refrain from union affiliations in order to get work. The employee was said to be "free to decline employment on those terms, just as the employer may decline to offer employment on any other; for 'it takes two to make a bargain.'" As to loss of independence after making the bargain, he said: "Freedom of contract, from the very nature of the thing, can be enjoyed only by being exercised;



and each particular exercise of it involves making an engagement which, if fulfilled, prevents for the time any inconsistent course of conduct." In the Hitchman case it is not to Mr. Justice Pitney but to Mr. Justice Brandeis that we must look for this point of view. In the dissenting opinion we find the following:

It is urged that a union agreement curtails the liberty of the operator. Every agreement curtails the liberty of those who enter into it. The test of legality is not whether an agreement curtails liberty, but whether the parties have agreed upon something which the law prohibits or declares otherwise to be inconsistent with the public welfare.

Then follows the enumeration of the details of the union agreement quoted on page 654 *supra*, and the comment:

These are the chief features of a "unionizing" by which the employer's liberty is curtailed. Each of them is legal. To obtain any of them or all of them men may lawfully strive and even strike. And if the union may legally strike to obtain each of the things for which the agreement provides, why may it not strike or use equivalent economic pressure to secure an agreement to provide them?

To this Mr. Justice Pitney gives no answer except to reiterate the "legal right" of the plaintiff to run its mine nonunion, to make agreements to that end with its employees, and "to be protected in the enjoyment of the resulting status, as in any other legal right." This status is deemed so sacred that the purpose of the union leaders to interfere with it is in itself unlawful. Unions may strive to increase their numbers, but they must not in so doing strive to unionize any mine in which employees have agreed to quit if they join the union. After quoting a familiar statement from the Mogul Steamship Case<sup>1</sup> as to the unlawfulness of inflicting intentional damage without just cause or excuse, Mr. Justice Pitney adds:

And the intentional infliction of such damage upon another, without justification or excuse, is malicious in law. . . . And we cannot deem the proffered excuse to be a "just cause or excuse" where it is based, as in this case, upon an assertion of conflicting rights that are sought to be attained by unfair methods, and for the very purpose of interfering with plaintiff's rights, of which defendants have full notice.

<sup>1</sup> 23 Q. B. Div. 613.

Leaving aside the question of methods,<sup>1</sup> this is to say that plaintiff's purpose is its right, and therefore defendants' contrary purpose cannot be their right.

Defendants' purpose seems to be regarded as illegal, no matter by what methods it is pursued. Much of the assertion in the majority opinion leads to this inference, and the inference is reënforced by one of the clauses of the injunction. As paraphrased by Mr. Justice Pitney, it restrained defendants from "knowingly and willfully enticing plaintiff's employees, present or future, to leave plaintiff's service on the ground that plaintiff does not recognize the United Mine Workers of America or runs a nonunion mine, etc." In this clause there is no reference to enticing breaches of contract. So far as the terms above quoted disclose, defendants would be sent to jail if they persuaded any of plaintiff's employees to join the union. For anyone who joined had to leave plaintiff's service because plaintiff ran a nonunion mine. Enticing him to join the union is enticing him to leave because plaintiff runs a nonunion mine. Such leaving would, it is true, be by the consent and the compulsion of the plaintiff, but the clause now under consideration is not qualified by the words "without plaintiff's consent."

<sup>1</sup> The minority insist that the methods of defendants were entirely fair. The organizer had informal talks and some quietly conducted public meetings in which he pointed out that though "the Company was then paying them according to the union scale, there would be nothing to prevent a later reduction of wages unless the men united." He also pointed out that if the men lost their present jobs, "membership in the union was requisite to obtaining employment in the union mines of the neighboring states." The majority, however, insist that he used "abusive language" respecting the superintendent and two of the miners who evidently were opposed to the union, and that he represented the possible reduction of wages so that the ignorant miners might naturally believe he was speaking with knowledge. They also refer to a conversation in which he represented that Koch, the general manager, "had nothing against having the place organized again."

The really important dispute as to methods is whether they involved breach of contract. The minority do not make clear whether, if they agreed with the view that continuing work after the secret agreement constituted a breach of contract, they would sanction the injunction on that point. They concede that mere persuasion to leave the employment requires justification, and declare that plaintiff's individual contracts add nothing to its rights so long as the employment is terminable at will. They hold, however, that the object of strengthening the union justified the persuasion. They imply that it would not justify inducing breach of a contract to serve for a definite term. But as to other possible contracts they are silent.

It is probable, however, that Mr. Justice Pitney's paraphrase of this clause of the injunction is incomplete. The reference to it in the minority opinion contains the qualification: "for the purpose of unionizing plaintiff's mine without plaintiff's consent." But even this qualification would not make licit an "enticement" to join the union which was part of a plan to unionize the mine. If defendants had such a plan, they would be restrained from asking plaintiff's employees one by one to join the union, even though they joined openly and withdrew from work at once as the employer desired. If union officials wish to start a membership campaign among miners working under a nonunion agreement, they must be without any thought of later unionizing the mine. For to seek to unionize a mine run under a nonunion agreement is to seek to make it impossible for the mine owner "to exercise his undoubted legal and constitutional right," and for the very purpose of making it impossible, and therefore without just cause or excuse. For it is no justification that the defendants are seeking to strengthen the union and to secure collective bargaining, since collective bargaining interferes with the employer's right to make individual bargains and "is not bargaining at all in any just sense unless it is voluntary on both sides." It is "coercion" and an interference with the "independence" of the employer.

Recognized canons of judicial action require us to limit the authority of the actual decision of the *Hitchman* case to situations where there is some element of breach of contract and a threatened strike. Parts of the majority opinion so limit the decision. But other parts and some of the terms of the injunction go further. Two inconsistent threads of thought run through the majority opinion. One would permit union officials to secure members from men working under a nonunion agreement if each man announces his new affiliation as soon as it occurs and leaves the employment as the contract under which he is working permits and requires. The other would forbid it if there was evidence of a plan to unionize the mine.

If law, as Mr. Justice Holmes says, is a prophecy of what courts will do in fact, it is more important to know what a majority of the Supreme Court think than what they have technically decided. And it seems pretty clear that at present a majority of the Supreme Court think that labor unions must take no steps whatever to unionize

a nonunion mine, at least where its nonunion character has been protected by contracts with the employees. In the absence of such an object they may take steps to get union members from a nonunion mine provided the employer is apprised of each inch of their progress. If their success is sufficiently rapid, the employer may find himself in a position where he prefers to ask the men to come back even though they remain in the union. Then arises a new situation which the Hitchman case does not cover. For it is explicitly stated in the majority opinion that "the case involves no question of the rights of employees," and further that the "defendants could not, without agency, set up any rights that employees might have."

If, therefore, union officials form their plan to unionize a mine only after it has ceased to be a closed nonunion mine and has become an open one, it would seem that they may carry out their plan as agents of the union members among the employees. But the present majority of the Supreme Court is not likely to find such a situation occurring in the affairs of the United Mine Workers of America. For they will always have the evidence relied on in the Hitchman case, which establishes from the proceedings of their annual convention that the U. M. W. A. mean to unionize every mine they can. Every step to secure members from nonunion mines must therefore be part of a plan to unionize the mine. Employees who wish to affiliate with the U. M. W. A. must do so entirely of their own initiative. But even this initiative will probably be checked by the type of nonunion agreement which appears in *Eagle Glass and Manufacturing Company v. Rowe*,<sup>1</sup> decided the same day as the Hitchman case. This required each employee to promise "that if at any time while so employed he desired to become connected with the union he would withdraw from the employ of the Company, and that while in its employ he would not make any effort amongst its employees to bring about the unionizing of the plant against the Company's wish." With such an agreement the employees themselves would be restrained from casting glances at the union in the desire to get the mine unionized.

Thus it appears that the equal liberty of employer and employed which is the boast of the law is a personal and individual matter.

<sup>1</sup>245 U. S. 276 (1917).

Each laborer when unemployed is as free from legal restraint as to what bargain he shall make as is each employer. After his bargain the extent of his freedom depends upon the terms of the bargain. Though limited, it is self-limited. Freedom has curtailed freedom. But the freedom curtailed is not that of the individual contractor alone. By a bargain which leaves himself free to leave the employment at any time he binds others not to persuade him to leave. For he has helped to create a status—the status of the closed non-union shop. He may dissolve the status so far as it concerns him. But others may not seek to dissolve the status through him. Thus each laborer holds in his own hands the liberty of other laborers, which he may bargain away. Much as they may desire to improve their position by prevailing upon all laborers to act collectively, they may not approach one who has agreed to leave his employment if he desires to unite with them. “The right of workingmen to form unions, and to enlarge their membership by inviting other workingmen to join them” is “freely conceded.” But the judges who concede it hold that it cannot be exercised for the purpose of changing a closed nonunion mine into a closed union mine. To the contention to the contrary, “it is a sufficient answer, in law, to repeat that plaintiff had a legal and constitutional right to exclude union men from its employ.”

This is the law of West Virginia, as declared by the Supreme Court of the United States in a case where federal jurisdiction obtained by reason of diversity of citizenship. Mr. Cook, in the article previously referred to, says that the cases cited by the Supreme Court from West Virginia and other jurisdictions in support of the inadequacy of defendants’ justification do not establish it. They support the principle that justification is necessary to excuse one who persuades employees to leave their employer, but they do not negative the lawfulness of the excuse offered by the defendants in the case at bar. Mr. Justice Pitney negatives it only by asserting that defendants’ purpose and alleged justification interfere with plaintiff’s right. This is conceded if the term “right” is properly understood. But in the same sense of the term the interference was in the exercise of a conflicting right of the defendants. The mere statement of the conflict throws no light on which should prevail, or what adjustment should be made. That question is plainly one of policy. Congress

and the legislatures of at least fourteen states<sup>1</sup> have indicated their views of policy by prohibiting the type of agreement which was the foundation of the plaintiff's action in the Hitchman case. This policy the Supreme Court reverses, not only by insisting that the making of such agreements cannot be inhibited but by declaring that when made for any mine or mill they end the liberty of organized labor to seek to organize that establishment.

These competing policies are undoubtedly debatable. It is much less clear that the judges have satisfactorily debated them. Much, if not most, of the reasoning given in support of the decisions is abstract and artificial. "Liberty" and "equality" and "right" seem often to be terms to conjure with rather than to enlighten. We are not likely to get a satisfactory solution of the problem of collective bargaining through the jurisprudence of abstract conceptions. Indeed, jurisprudence of any kind may play but a pigmy part in the solution, which seems to be conditioned less on the conclusions of judicial reasoning than on what a despised and revered writer has called "that simpler line of expedients which the drift of circumstance, being not possessed of a legal mind, has employed in the sequence of institutional change hitherto." The three decisions under review do not seem greatly to have delayed the progress of collective bargaining. They may soon be mainly of philosophical and antiquarian interest.

THOMAS REED POWELL

COLUMBIA UNIVERSITY

<sup>1</sup>A list is given in the margin of Mr. Justice Day's dissenting opinion in the Coppage case, at page 29.

## XL

### A NEW PROVINCE FOR LAW AND ORDER<sup>1</sup>

THE new province is that of the relations between employers and employees. Is it possible for a civilized community so to regulate these relations as to make the bounds of the industrial chaos narrower, to add new territory to the domain of order and law? The war between the profit-maker and the wage-earner is always with us; and, although not so dramatic or catastrophic as the present war in Europe, it probably produces in the long run as much loss and suffering, not only to the actual combatants but also to the public. Is there no remedy?

During a brief sojourn in the United States in the summer of 1914 I had the good fortune to meet many men and women of broad and generous outlook and of admirable public spirit. They were anxious to learn what I, as president of the Australian Court of Conciliation and Arbitration, could tell them of Australian methods of dealing with labor questions. I propose now, on the invitation of the editor of this *Review*, to state briefly the present position, confining my survey to my own personal experience.

The Australian Federal Constitution of 1900 gave to the Federal Parliament power to make laws with respect to "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one state."<sup>2</sup> Following the example of the United States Constitution, the Constitution left all residuary powers of legislation to the states; and the theory generally held at the time of our constitutional convention was that each state should be left to deal with its own labor conditions as it thought best. But an exception was made, after several discussions, in favor of labor disputes which pass beyond state boundaries and cannot be effectually dealt with by the laws of any one or more states. Just as bush fires run through the artificial

<sup>1</sup>From *Harvard Law Review*, Vol. XXIX (1915), pp. 13-39.

<sup>2</sup>Article XXXV, Section 51.

state lines, just as the rabbits ignore them in pursuit of food, so do, frequently, industrial disputes.

In pursuance of this power an act was passed December 15, 1904, constituting a Court for Conciliation, and where conciliation is found impracticable, arbitration. The arbitration is compulsory in the sense that an award, if made, binds the parties. The act makes a strike or a lockout an offense if the dispute is within the ambit of the act—if the dispute is one that extends beyond the limits of one state. In other words, the process of conciliation, with arbitration in the background, is substituted for the rude and barbarous processes of strike and lockout. Reason is to displace force; the might of the State is to enforce peace between industrial combatants as well as between other combatants; and all in the interest of the public.

Under the act the Court consists of a president, who must be one of the justices of the High Court of Australia. The High Court is modeled on the Supreme Court of the United States, having often to decide whether acts are constitutional, but it is also a Court of Appeal from the supreme courts of the states. The first president of the Court of Conciliation was appointed February 10, 1905, and on his resignation in September, 1907, I was appointed as his successor.

The first task that I had to face was not, strictly speaking, conciliation or arbitration. The Federal Parliament imposed certain excise duties on agricultural implements manufactured, but it provided for the remission of the duties in the case of goods manufactured under conditions, as to the remuneration of labor, which the president of the Court should certify to be "fair and reasonable."<sup>1</sup> The act gave no guidance as to the model or criterion by which fairness and reasonableness were to be determined. In dealing with the first employer who applied to me for a certificate I came to the conclusion that the act was designed for the benefit of employees and that it was meant to secure for them something which they could not get by individual bargaining with their employers. If A let B have the use of his horse on the terms that B give the horse fair and reasonable treatment, B would have to give the horse proper food and water, shelter, and rest. I decided, therefore, to adopt a standard based on "the normal needs of the average employee, regarded as

<sup>1</sup> Excise Tariff 1906.



a human being living in a civilized community." This was to be the primary test in ascertaining the minimum wage that would be treated as "fair and reasonable" in the case of unskilled laborers. At my suggestion many household budgets were stated in evidence, principally by housekeeping women of the laboring class; and, after selecting such of the budgets as were suitable for working out an average, I found that in Melbourne, the city concerned, the average necessary expenditure in 1907 on rent, food, and fuel in a laborer's household of about five persons was £1 12s. 5d. (about \$7.80, taking a dollar as equivalent to 4s. 2d.); but that, as these figures did not cover light, clothes, boots, furniture, utensils, rates, life insurance, savings, accident or benefit societies, loss of employment, union pay, books and newspapers, tram or train fares, sewing machine, mangle, school requisites, amusements and holidays, liquors, tobacco, sickness or death, religion or charity, I could not certify that any wages less than 42 s. per week for an unskilled laborer would be fair and reasonable. Then, in finding the wages which should be treated as fair and reasonable in the cases of the skilled employees, I relied mainly on the existing ratios found in the practice of employers. If, for instance, the sheet-iron worker got 8s. per day when the laborer got 6 s., the sheet-iron worker should get, at the least, 9 s. when the laborer's minimum was raised to 7 s.

In the case referred to, the employer did not raise before me the point that the act was invalid; but, having failed in his application for a certificate, he refused to pay the excise duty, and defended an action to recover the duty before the High Court on the ground that the act was invalid; and he succeeded, by a majority of three justices to two, on the ground that the act was not really a taxation act at all, but an act to regulate labor conditions, and as such beyond the competence of the Federal Parliament.<sup>1</sup> But the principles adopted in the case for ascertaining a "fair and reasonable" minimum wage have survived and are substantially accepted, I believe universally, in the industrial life of Australia.

In the first true arbitration case—that relating to ship's cooks, bakers, etc.—the standard of 7 s. per day was attacked by employers, but I do not think that it has been attacked since, probably because the cost of living has been rising. The Court announced that it

<sup>1</sup> *King v. Barger, Commonwealth v. McKay*, 6 Com. Law Rep. 41 (1908).

would ascertain first the necessary living wage for the unskilled laborer, and then the secondary wage due to skill or other exceptional qualifications necessary. Treating marriage as the usual fate of adult men, a wage which does not allow of the matrimonial condition and the maintenance of about five persons in a home would not be treated as a living wage. As for the secondary wage, it seemed to be the safest course, for an arbitrator not initiated into the mysteries of the several crafts, to follow the distinctions in grade between employees as expressed in wages for many years.

The distinction between the basic or primary or living wage and the secondary wage attributable to exceptional qualifications necessary for the performance of the function is not fanciful; it was forced on the Court by the problems presented and by the facts of industrial life. Yet it has to be borne in mind that though the essential natural needs come first, the conventional needs (for example, of artisans as distinguished from laborers) become, by usage, almost equally imperative.<sup>1</sup>

The following propositions may, I think, be taken to be established in the settlement of minimum wages by the Court; and it is surprising to find how often, as the principles of the Court's action come to be understood and appreciated, they guide parties disputing to friendly collective agreements, without any award made by the Court.

1. One cannot conceive of industrial peace unless the employee has secured to him wages sufficient for the essentials of human existence.<sup>2</sup>

2. This, the basic wage, must secure to the employee enough wherewith to renew his strength and to maintain his home from day to day.<sup>3</sup>

3. The basic wage is the same for the employee with no family as for the employee with a large family. It rests on Walt Whitman's "divine average," and the employer need not concern himself with his employee's domestic affairs.

<sup>1</sup> Engine Drivers, 7 Com. Arb. 132, 139 (1913).

<sup>2</sup> Boot Factories, 4 Com. Arb. 1, 10 (1910); Seamen, 5 Com. Arb. 147, 164 (1911).

<sup>3</sup> Broken Hill Mine, 3 Com. Arb. 1, 20 (1909).

4. The secondary wage is remuneration for any exceptional gifts or qualifications,<sup>1</sup> not of the individual employee, but gifts or qualifications necessary for the performance of the functions; for example, skill as a tradesman, exceptional heart and physique (as in the case of a gas stoker),<sup>2</sup> exceptional muscular training and power (as in the case of a shearers),<sup>3</sup> exceptional responsibility (for example, for human life, as in the case of winding or locomotive engine drivers).<sup>4</sup>

5. The secondary wage, as far as possible, preserves the old margin between the unskilled laborer and the employee of the skilled or exceptional class.<sup>5</sup>

6. After ascertaining the proper wages, basic and secondary, the Court considers any evidence adduced to show that the employers ought not to be asked to pay such wages.<sup>6</sup> It will consider grounds of finance, of competition with imports, of unfairness to other workers, of undue increase in prices of the product, of injury to the public, etc.

7. The wages cannot be allowed to depend on the profits made by the individual employer, but the profits of which the *industry* is capable may be taken into account. If the industry is novel, and those who undertake it have to proceed economically, there may be a good cause for keeping down wages, but not below the basic wage, which must be sacrosanct. Above the basic wage bargaining of the skilled employee may, with caution, be allowed to operate.<sup>7</sup>

8. The fact that a mine is becoming exhausted or poorer in its ores is not a ground for prescribing a lower rate than would otherwise be proper. If shareholders are willing to stake their own money on a speculation, they should not stake part of the employee's proper wages also. The Court cannot endanger industrial peace in order to keep unprofitable mines going.<sup>8</sup>

<sup>1</sup>Boot Factories, 4 Com. Arb. 1, 10 (1910); Postal Electricians, 7 Com. Arb. 5, 10 (1913); Builders' Laborers, 7 Com. Arb. 210, 217 (1913).

<sup>2</sup>Gas Employees, 7 Com. Arb. 58, 71 (1913).

<sup>3</sup>Shearers, 5 Com. Arb. 48, 79 (1911).

<sup>4</sup>Engine Drivers, 5 Com. Arb. 9, 21 (1911).

<sup>5</sup>McKay, 2 Com. Arb. 1, 16 (1907); Ship's Cooks, 2 Com. Arb. 55, 65, 66 (1908).

<sup>6</sup>Broken Hill Mine, 3 Com. Arb. 1, 31 (1909).

<sup>7</sup>*Ibid.* 32; Shearers, 5 Com. Arb. 48, 73 (1911); Ship's Officers, 6 Com. Arb. 6, 21 (1912).

<sup>8</sup>Broken Hill Mine, *supra*, 33-34; Engine Drivers, 7 Com. Arb. 132, 139 (1913).

9. The Court does not increase the minimum on the ground of affluence of the employer. It is not affected by the fact that one of the employers can, by skillful management, by enterprise, or by good fortune, make very large profits.<sup>1</sup>

10. The minimum rate must be based on the highest function that the employee may be called on to exercise. The employer must not give a plumber laborer's work and pay him laborer's wages if he has also to do plumbing.<sup>2</sup>

11. In finding the proper minimum rate the Court tries to find what would be proper for an employee of average capacity called upon to do work of the class required. If the employer desires to secure the services of an exceptional workman, he is free to do so. The payment of higher rates is left to the play of bargaining.<sup>3</sup>

12. The Court does not attempt to discriminate in wages on the ground of comparative laboriousness. Discrimination on such a ground is neither safe nor sound. The Court declined to give an extra rate to hodmen if they carry beyond a certain height.<sup>4</sup>

13. The Court will not discriminate in wages as between the several states so as to interfere with the freedom of trade between the states provided by the Constitution.<sup>5</sup>

14. The Court will not keep down wages on steamers so as to enable them to beat state railways in competition or to help one competitor against another.<sup>6</sup>

15. The Court accepts and follows the usual practice of making rates for casual employment higher than the corresponding rates for continuous employment.<sup>7</sup>

16. The Court, in obedience to the act, provides exceptions to the minimum rate in the case of aged, slow, or infirm workers, but the exceptional cases must be disclosed to the representative of the union and be well safeguarded.<sup>8</sup>

<sup>1</sup>Seamen, 5 Com. Arb. 147, 164 (1911); Gas Employees, 7 Com. Arb. 58, 72 (1913).

<sup>2</sup>Postal Electricians, 7 Com. Arb. 5, 8-9 (1913).

<sup>3</sup>Ship's Stewards, 4 Com. Arb. 61, 63, 68 (1910); Engine Drivers, 5 Com. Arb. 9, 15 (1911); Shearers, 5 Com. Arb. 48, 91 (1911); Builders' Laborers, 7 Com. Arb. 210, 223 (1913).

<sup>4</sup>*Ibid.* 231.

<sup>5</sup>Constitution, Section 92; Boot Factories, 4 Com. Arb. 1, 13 (1910).

<sup>6</sup>Ship's Officers, 6 Com. Arb. 6, 22 (1912).

<sup>7</sup>Builders' Laborers, 7 Com. Arb. 210, 218 (1913).

<sup>8</sup>Act, Section 40; Boot Factories, 4 Com. Arb. 1, 24 (1910).

17. But the Court will not provide exceptions to the minimum rate for "improvers," men paid more than boys and less than journeymen, men who are used to beat down the claims of competent journeymen and are thus a perpetual menace to the peace of the community.<sup>1</sup>

18. The Court regards the old system of apprenticeship as unsuitable for factories under modern conditions, and it objects to fixing a rigid proportion of apprentices to journeymen without regard to the circumstances; for example, the character of the output of each factory. But if conditions of apprenticeship are in dispute, the Court will, especially if both sides wish it, and for the sake of peace as well as efficiency, make regulations on the subject. The proper method, however, seems to be, in boot factories, to coördinate the work of the factories with the work of the technical schools.<sup>2</sup>

19. The Court will not prescribe extra wages to compensate for unnecessary risks to the life or health of the employee or unnecessary dirt. No employer is entitled to purchase by wages the right to endanger life or to treat men as pigs.<sup>3</sup>

20. The Court gives weight to existing conventions, usages, prejudices, exceptional obligations and expenses of the employee; for instance, that masters and officers are required to keep up a certain appearance, and that stewards must provide themselves with uniform and laundry.<sup>4</sup>

21. Where it is established that there is a marked difference in the cost of living between one locality and another the difference will, so far as possible, be reflected in the minimum wage.<sup>5</sup>

22. But where, as in the case of the wharf laborers at ports, all the employees and nearly all the employers desire that there should be no differentiation the Court bases the minimum wage on the mean Australian cost of living.<sup>6</sup>

<sup>1</sup>*Ibid.* 16.

<sup>2</sup>Boot Factories, 4 Com. Arb. 1, 19, 20 (1910).

<sup>3</sup>Ship's Cooks, 2 Com. Arb. 55, 59, 60 (1908); Seamen, 5 Com. Arb. 147, 164 (1911).

<sup>4</sup>Ship's Officers, 4 Com. Arb. 89, 93, 95 (1910); Ship's Stewards, 4 Com. Arb. 61, 66 (1910).

<sup>5</sup>Broken Hill Mine, 3 Com. Arb. 1, 28-30 (1909); Engine Drivers, 5 Com. Arb. 9, 23 (1911); 7 Com. Arb. 132, 141 (1913); Fruit-growers, 6 Com. Arb. 61, 69 (1912); Gas Employees, 7 Com. Arb. 58, 70-74 (1913); Builders' Laborers, 7 Com. Arb. 210, 221 (1913).

<sup>6</sup>Wharf Laborers, 8 Com. Arb. (1914).

23. In cases such as that of ship's stewards, where the employees usually receive from passengers "tips" (or "bunce"), the average amount of the tips must be taken into account in finding whether the employee receives a living wage. But the minimum wage will be raised to its proper level if the practice of tipping can be stopped.<sup>1</sup>

24. In cases where employees are "kept," found in food and shelter by the employer, the value of the "keep" is allowed in reduction of the wages awarded. At a time when the keep of single men, such as laborers, cost in lodgings usually 15 s. per week the Court reduced the wages by 10 s. only. For the 15 s. at the family home would go further than it would go for board and lodging outside the home; and the employer who feeds a large number of men can buy the necessary commodities in large quantities and on advantageous terms. The 10 s. per week seemed to represent fairly the amount of expenditure of which the home was relieved by the absence of the man.<sup>2</sup>

25. The principle of the living wage has been applied to women, but with a difference, as women are not usually legally responsible for the maintenance of a family. A woman's minimum is based on the average cost of her own living to one who supports herself by her own exertions. A woman or girl with a comfortable home cannot be left to underbid in wages other women or girls who are less fortunate.<sup>3</sup>

26. But in an occupation in which men as well as women are employed the minimum is based on a man's cost of living. If the occupation is that of a blacksmith, the minimum is a man's minimum; if the occupation is that of a milliner, the minimum is a woman's minimum; if the occupation is that of fruit picking, as both men and women are employed, the minimum must be a man's minimum.<sup>4</sup>

27. As regards hours of work, when disputed, the Court usually adheres to the general Australian standard of forty-eight hours; generally eight and three-quarters hours on five days, four and one-quarter hours on Saturday. But in exceptional cases the Court has reduced the hours: in one case because of the nerve-racking

<sup>1</sup>Ship's Stewards, 4 Com. Arb. 61, 64 (1910).

<sup>2</sup>Ship's Cooks, 2 Com. Arb. 55, 62 (1908); Ship's Stewards, 4 Com. Arb. 61, 63 (1910).

<sup>3</sup>Fruit-growers, 6 Com. Arb. 61, 71 (1912).

<sup>4</sup>*Ibid.* 72.

character of the occupation;<sup>1</sup> in another case, that of builders' laborers, because the men have to "follow their job," spending much of their own time in traveling.<sup>2</sup>

28. The Court has conceded the eight hours' day, at sea as well as in port, to deck hands on ships,<sup>3</sup> to officers on ships,<sup>4</sup> to marine engineers.<sup>5</sup> But there are sundry necessary exceptions, and the Master retains the absolute right to call on any man in emergencies involving the safety of the ship; and for other purposes he may call on any man, paying extra rates for the overtime. The hours of navigating officers were sometimes shocking and involved danger to ship, cargo, and passengers.<sup>6</sup>

29. In certain exceptional cases the Court has granted a right to leave of absence for two or three weeks on full pay to employees after a certain length of continuous service; not, of course, to casual or temporary employees.<sup>7</sup>

30. The Court refuses to dictate to employers what work they should carry on, or how; or what functionaries they should employ, or what functions for each employee; or what tests should be applied to candidates for employment.<sup>8</sup>

31. The Court leaves every employer free to carry on the business on his own system, so long as he does not perpetuate industrial trouble or endanger industrial peace; free to choose his employees on their merits and according to his exigencies; free to make use of new machines, of improved methods, of financial advantages, of advantages of locality, of superior knowledge; free to put the utmost pressure on anything and everything except human life.<sup>9</sup>

32. As regards complaints of disagreeable or onerous conditions, the Court treats as fundamental the consideration that the work of

<sup>1</sup>Postal Electricians, 7 Com. Arb. 5, 15-16 (1913).

<sup>2</sup>Builders' Laborers, 7 Com. Arb. 210, 228-229 (1913).

<sup>3</sup>Seamen, 5 Com. Arb. 147, 159, 160 (1911).

<sup>4</sup>Ship's Officers, 4 Com. Arb. 89, 99 (1910).

<sup>5</sup>Marine Engineers, 6 Com. Arb. 95, 107 (1912).

<sup>6</sup>Ship's Officers, 6 Com. Arb. 6, 16, 17 (1912).

<sup>7</sup>*Ibid.* 15, 25; 7 Com. Arb. 92, 104 (1913); Postal Electricians, 7 Com. Arb. 5, 17 (1913).

<sup>8</sup>Broken Hill Mine, 3 Com. Arb. 1, 36 (1909); Postal Electricians, 7 Com. Arb. 5, 7, 8, 13, 18, 19 (1913).

<sup>9</sup>Boot Factories, 4 Com. Arb. 1, 18 (1910); Shearers, 5 Com. Arb. 48, 100 (1911); Fruit-growers, 6 Com. Arb. 61, 75 (1912); Gas Employees, 7 Com. Arb. 58, 77 (1913).

the ship, factory, mine, etc. must be done, a consideration next in order to that of the essential needs of human life. An order will not be made that is inconsistent with the effective management of the undertaking.<sup>1</sup>

33. On the same principle the Court steadily refuses to make orders which would militate against the public interest or convenience. It has refused to order prohibitive overtime rates for leaving port on Sundays;<sup>2</sup> it has refused to forbid the employment of casuals or to forbid "broken time" in tramway services. Casuals or "broken time," or both, are necessary to meet the extra traffic at certain times of the day.<sup>3</sup>

These are some of the principles of action adopted by the Court. But, it may be asked, what about piecework? How does the Court fix piecework rates? The first great case in which piecework rates were directly involved was that of the Shearers.<sup>4</sup> At the time of the arbitration wool furnished nearly forty per cent of the exports of Australia, nearly £29,000,000 per annum, in addition to the wool used in Australia. In that case the Court prescribed the piecework rates on a time-work basis—found the piecework rates which would enable an average shearer to earn such wages per week as would be the just minimum for a man with the qualifications of a shearer if he were paid by time. Having found that the shearer should, as a "skilled" worker, get a net wage of £3 per week for the time of his expedition to the sheep stations to shear, and having found that a rate of 24s. per 100 sheep would give this net result, the Court fixed 24s. per 100 as the minimum rate.<sup>5</sup> In finding the net returns of the whole expedition allowances had to be made for days of traveling and waiting, expenses en route, cost of mess and combs and cutters.<sup>6</sup> This system of finding the net result of the *expedition*, and what would be a fair return for the expedition, was also adopted in the case of persons employed by fruit-growers on the River Murray.<sup>7</sup> Sometimes the Court protects pieceworkers in making their bargain by

<sup>1</sup> Ship's Stewards, 4 Com. Arb. 61, 73 (1910); Ship's Officers, 4 Com. Arb. 89, 101 (1910).

<sup>2</sup> Seamen, 5 Com. Arb. 147, 160 (1911).

<sup>3</sup> Tramways, 6 Com. Arb. 130, 144 (1912).

<sup>4</sup> 5 Com. Arb. 48 (1911).

<sup>5</sup> *Ibid.* 73, 79.

<sup>6</sup> *Ibid.* 74, 76.

<sup>7</sup> Fruit-growers, 6 Com. Arb. 61, 68 (1912).



prescribing that their remuneration shall not fall below, in result, a certain time-work minimum.<sup>1</sup>

The system of arbitration adopted by the act is based on unionism. Indeed, without unions it is hard to conceive how arbitration could be worked. It is true that there are methods provided by which the Court can intervene for the preservation of industrial peace even when its powers are not invoked by any union; but no party can file a plaint for the settlement of a dispute except an "organization"; that is to say, a union of employers or of employees registered under the act.<sup>2</sup> One of the "chief objects" of the act, as stated in Section 2, is "to facilitate and encourage the organization of representative bodies of employers and of employees and the submission of industrial disputes to the Court by organizations"; and it follows that the Court will not assist an employer in devices to stamp out unionism.<sup>3</sup> It is, of course, better for an employer that he should not be worried by complaints of individual employees and that any complaints should be presented collectively by some responsible union. He has then the advantage of being able to deal with his employees on a consistent scheme, equitable all round the service, and his time is not taken up by petty complaints or individual fads. A demand made on him comes from a responsible executive, with the consent, direct or indirect, of the organized body of members of the union. Moreover, from the point of view of the employees, it is better that an individual employee should not, by complaining, incur the risk of becoming a marked man or of being removed, and the individual employee is generally powerless. From the point of view of the Court and of the public, it is fair to state that in nearly every case—I can only remember one case to the contrary—the influence of union leaders has always been in the direction of peace. It would not be so, probably, if there were no means of obtaining an improvement of conditions except by strike, actual or threatened, but in Australia the leaders can hold out to the members of the union a prospect of relief, without strike, from the Court or from some wages board.<sup>4</sup> It is significant that in the one exceptional case referred to, the leaders of the union have been converted so that they are now strong advocates of arbitration.

<sup>1</sup>*Ibid.* 75.

<sup>2</sup>Section 19.

<sup>3</sup>Tramways, 6 Com. Arb. 130, 143 (1912).

<sup>4</sup>Marine Engineers, 6 Com. Arb. 95, 100 (1912).

But then comes the difficult question of "preference to unionists." Preference to unionists is the Australian analogue of the "preferential union shop" made familiar in some of the garment industries of the United States. The act gives the Court power to direct that as between members of organizations (unions) of employees and other persons desiring employment at the same time preference shall be given to such members, other things being equal.<sup>1</sup> But it is only a power, not a duty, to order such preference, and the Court is very loath to exercise the power. "The absolute power of choice [between applicants for employment] is one of the recommendations of the minimum-wage system from the employer's point of view—he can select the best men available when he has to pay a certain rate."<sup>2</sup> For this reason preference was refused in the case of shearers etc.,<sup>3</sup> in the case of seamen;<sup>4</sup> in the case of builders' laborers.<sup>5</sup> Yet the Court recognizes the difficulty of the position. As was said in the builders' laborers case:

The truth is, preference is sought for unionists in order to prevent preference of nonunionists or antiunionists—to prevent the gradual bleeding of unionism by the feeding of nonunionism. It is a weapon of defense. For instance, some employers here hired men through the Independent Workers' Federation—a body supported chiefly by employers' money, and devised to frustrate the ordinary unions; and those who applied for work at the office of this body would not be introduced to the employer unless they ceased to be members of the ordinary unions and became members of this body. What is to be done to protect men in the exercise of their right as free men to combine for their mutual benefit, seeing that the employing class has the tremendous power of giving or withholding work? The only remedy that the act provides is an order for preference; and it is doubtful whether such an order is appropriate or effective. It is, indeed, very trying for men who pay full dues to a legitimate union to work side by side with men who do not—with men who look to their own interests only, seeking to curry favor with the employers, getting the benefit of any general rise in wages or betterment of conditions which is secured without their aid and in the teeth of their opposition, men who are preferred (other things being equal) for vacancies and promotion. Every fair man

<sup>1</sup>Section 40.

<sup>2</sup>Engine Drivers, 5 Com. Arb. 9, 25 (1911); 7 Com. Arb. 132, 147 (1913); Tramways, 6 Com. Arb. 35, 47 (1912).

<sup>3</sup>5 Com. Arb. 48, 99 (1911).

<sup>4</sup>5 Com. Arb. 147, 170 (1911).

<sup>5</sup>7 Com. Arb. 210, 233 (1913).

recognizes the difficulty of the position—every man who is not too much of a partisan to look sometimes at the other side of the hedge. In another case recently before me a nonunionist told me that he acted solely on the basis of his personal interest, without any regard for the interests of his fellow workers. He looked for favors to himself because he kept away from those who combined for the common good of the whole body. It is not out of consideration for such men that I refuse preference; it is rather out of consideration for such employers as honestly take the best man available, unionist or not. I do not want them to be harassed with the doubt, when selecting men for a post, whether they can prove their appointee to be better than all the unionist applicants. I refuse preference also out of consideration for many who have not joined any union simply because they have not felt the need. In the case of country building work, for instance, it is common for men on farms etc., when farm work is not pressing, to take a job as builders' laborer. Why should the employer be compelled to bring union laborers from the city? After all, the direct way for unionists to counteract unfair preference of nonunionists is for the unionists to excel—to give to the employer the best service. It is nearly always found that employers prefer a first-class man who is unionist to a second-class man who is nonunionist.<sup>1</sup>

The only case in which the Court has ordered preference is the case of a tramway company which deliberately discriminated against unionists and refused to undertake not to discriminate in future.<sup>2</sup> It is to be observed that the Court is not given power by the act to order that the employer shall not discriminate against unionists in giving or withholding employment.

The imposition of a minimum wage, a wage below which an employer must not go in employing a worker of a given character, implies, of course, an admission of the truth of the doctrine of modern economists, of all schools I think, that freedom of contract is a misnomer as applied to the contract between an employer and an ordinary individual employee. The strategic position of the employer in a contest as to wages is much stronger than that of the individual employee. "The power of the employer to withhold bread is a much more effective weapon than the power of the employee to refuse to labor."<sup>3</sup> Low wages are bad in the worker's eyes, but unemployment,

<sup>1</sup> 7 Com. Arb. 210, 233-234 (1913).

<sup>2</sup> Tramways, 6 Com. Arb. 130, 162 (1912).

<sup>3</sup> Engine Drivers, 5 Com. Arb. 9, 27 (1911).

with starvation in the background, is worse. The position was put luminously once, as well as with unconscious humor, by an employer on whom a plaint was served for settlement of a dispute by the Court. In place of filing an answer he wrote a letter to the registrar, denying that he was a party to any dispute. "I have never," said he, "quarreled or disputed with a laborer of any kind. . . . *If we cannot agree, well, we will part ; that ends the whole.* . . . Love is the power which will end all struggles, not legislation." Other respondents pin their faith not to "love" but to the sterner "law of supply and demand." They treat this law as being, in the matter of wages, more inexorable and inevitable than even the law of gravitation, as not being subject, as laws of nature are, to counteraction, to control, to direction. "One may dam up a river, or even change its course ; but one cannot [it is said] raise wages above the level of its unregulated price, above the level of a sum which a man will accept rather than be starved."<sup>1</sup> If the Court did nothing else than drag such theories into the light of day and into free discussion, it would be doing good service to the community. But it is coming to be recognized that what the Court does in fixing a minimum wage is by no means novel in principle. There are many acts of many legislatures which prescribe minimum conditions on other subjects. For example, mining acts often prescribe minimum conditions as to ventilation, timbering, safety appliances, machinery, sanitation. These matters are not left to individual bargaining.

There are no definite figures with regard to the cost to the parties of arbitration proceedings, but the cost is very slight. There are seldom any costs incurred in employing lawyers, for, under Section 27 of the act, lawyers cannot be employed except with the consent of both parties, and the employees generally refuse their consent. The secretary of the organization generally puts its case, and the employers or some permanent officer generally puts the employers' case. The principal expense of an arbitration is that of bringing witnesses. If prohibition proceedings are taken in the High Court to prevent the enforcement of an award on the ground that the Court of Conciliation has exceeded its jurisdiction (of which I shall say

<sup>1</sup> Engine Drivers, 5 Com. Arb. 27, 28 (1911) ; Ship's Officers, 6 Com. Arb. 6, 18 (1912) ; Marine Engineers, 6 Com. Arb. 95, 101 (1912).

more presently), no doubt heavy, very heavy, expenses are incurred, but these are not expenses of the arbitration.

But it has to be admitted that proceedings in the Court of Conciliation often take a very long time, sometimes weeks, in a few cases months. The proceedings cannot be otherwise than lengthy, as the disputes of which the Court can take cognizance are so widespread—must extend from one state into one or more other states. Moreover, the habit is to bring before the employers, and afterwards before the Court, a very long list of conditions in dispute, and the case of each employer has to be fairly considered by the Court in connection with each grievance. The number of employers respondent to a plaint is generally great. There were 311 employers in the Engine Drivers' case,<sup>1</sup> 570 in the case of the Builders' Laborers,<sup>2</sup> 650 in that of the Fruit-growers,<sup>3</sup> and 2549 at least in that of the Shearers.<sup>4</sup> The Court has no power to make an award a common rule of the industry; it cannot investigate and settle the proper conditions to be applied in one typical undertaking and then extend the same conditions to other undertakings of the same character. The act purported to give this power to the Court, but it was held by the High Court, on a case stated, that the act was in this respect unconstitutional and invalid.<sup>5</sup> This want of power to make a common rule for the industry not only lengthens the proceedings but it also may operate to the prejudice of the employers who are bound by the award. For the Court can deal only with employers who employ members of the union. Some rival employers may have no members of the union in their employment and therefore have to be excluded from the award. Their hands are free as to wages, while the hands of the others are fettered, and this is, of course, unfair as between competitors in the trade. In one case, that of the Boot Factories,<sup>6</sup> the difficulty was met by the employers and employees concurring in an application before the wages boards of each of the states concerned to have the terms of the award made a common rule for the state. But this remedy is not always available.

<sup>1</sup> 7 Com. Arb. 132 (1913).

<sup>2</sup> 7 Com. Arb. 210 (1913).

<sup>3</sup> 6 Com. Arb. 61, 65 (1912).

<sup>4</sup> 5 Com. Arb. 48, 65 (1911).

<sup>5</sup> Boot Factories, 11 Com. Law Rep. 311 (1910).

<sup>6</sup> 4 Com. Arb. 1 (1910); Builders' Laborers, 7 Com. Arb. 210, 235 (1913).

There is a provision in the act<sup>1</sup> enabling the Court to appoint a Board of Reference, assigning to it the function of determining specified matters which under the award may require to be determined. Such a provision, if properly drafted and valid, would be of eminent service to peace. Difficulties often arise under an award, owing to the vast variety of methods in the different undertakings, as to the application of the words of the award to some particular case. These and other difficulties ought to be met by collective adjustment between representatives of the employers on the one side and the representatives of the union on the other, with a neutral chairman; but from the nature of the case there would have to be a separate board in each of the centers of the industry. Nothing would tend more to prevent serious friction and to promote mutual understanding of employers and employees. "A suitable Board of Reference, under the ægis of a strong union, is a safety valve for any industry."<sup>2</sup> But, unfortunately, as the section stands, with the interpretation put upon it by the High Court, it is practically useless. The parties on both sides of a dispute often seek a board, or rather boards, of reference,<sup>3</sup> but the Court cannot generally help them. Sometimes, however, the parties to the dispute make and file agreements between the union and the several employers for a board and leave the Court to award on the other subjects in dispute; and the agreements are certified by the Court, and on being filed under Section 24 have the same binding effect as an award.<sup>4</sup>

There are two important powers of which the Court has frequently availed itself, or threatened to avail itself, with very excellent effect.<sup>5</sup> These are (1) the power to withhold an award if it appear "that further proceedings by the Court are not desirable in the public interest,"<sup>6</sup> and (2) the power to vary an award.<sup>7</sup> Sometimes the employees, though seeking an award, have taken up an obstinate attitude, intimating in effect that if the award does not meet their wishes they will not abide by it; and the Court has plainly intimated

<sup>1</sup> Section 40 *a*.

<sup>2</sup> Engine Drivers, 7 Com. Arb. 132, 144 (1913).

<sup>3</sup> Seamen, 6 Com. Arb. 59 (1912).

<sup>4</sup> Engine Drivers, 7 Com. Arb. 132, 135 (1913).

<sup>5</sup> Fruit-growers, 6 Com. Arb. 61, 78 (1912).

<sup>6</sup> Section 38 *h*.

<sup>7</sup> Section 38 *o*.

that it will not proceed with the arbitration on such terms.<sup>1</sup> It cannot be for the public interest to proceed with the arbitration under such a constraint. Arbitration by the Court is meant to be a substitute for the method of strike, and "you cannot have award and strike too."<sup>2</sup> In one case, while the Court was preparing an award for seamen and firemen information came that the firemen of the S. S. *Koombana* refused to work on the ship unless a certain chief steward were removed. The position was serious; the ship carried the mails, as well as passengers and cargo, for ports on the West Australian coast. There was an agreement in existence under which it was a breach of agreement on the part of the union if by reason of any dispute a vessel were detained twenty-four hours. The Court intimated that it would not make its award so long as the agreement was not observed. As a result officials of the union conducted suitable firemen to the port where the vessel lay, put them on board, and the *Koombana* went on its way; then, and not till then, the Court gave its award.<sup>3</sup>

The power to vary an award has also been held over the head of a recalcitrant union. It is not fair to keep the employers bound by the award if the union takes the benefit of the award and rejects the burden. The Court has power to lower or annul the minimum wage in such a case if necessary.<sup>4</sup> Fortunately, it never has been necessary. I may give one case in point. The wharf laborers were on strike in Brisbane; seamen who were enjoying the benefit of an award were ordered to unload their vessel. They were naturally indisposed to comply, but before refusing they telegraphed to the executive of their union for directions. They were told by the executive to unload or they would lose the award. They unloaded.

Another very valuable power is that conferred by Parliament in 1910, under which the president may, when a dispute exists or is threatened, summon any person to attend a conference in his presence. The attendance is compulsory, enforceable by penalty.<sup>5</sup> Frequently a quiet talk at such a conference has prevented a strike

<sup>1</sup> Gas Employees, 7 Com. Arb. 58, 62 (1913); Broken Hill Mine, 3 Com. Arb. 1, 20 (1909).

<sup>2</sup> Liquor Trade, 7 Com. Arb. 255 (1913).

<sup>3</sup> Seamen, 5 Com. Arb. 147, 173-174 (1911).

<sup>4</sup> Fruit-growers, 6 Com. Arb. 61, 78 (1912).

<sup>5</sup> Section 16 a.

which was imminent.<sup>1</sup> Frequently the parties arrange to proceed for arbitration and make temporary arrangements for carrying on work until the award.<sup>2</sup> Sometimes an actual strike, confined to one state though the dispute extended to two states, has been stopped, the men going back to work at the old rates until the award.<sup>3</sup> A further amendment was made in the act in 1911, under which, if no agreement has been reached at the conference, the president can refer the dispute to the Court for arbitration.<sup>4</sup> The fact that this whip is in the hands of the president, to be used in the last resort, and that the party with the stronger position for the time being will have to submit to an award if he takes up an obstinate attitude against all agreement, is found to operate as a strong inducement to compromise and to reasonable arrangements by consent. Agreements in lieu of award have often been fixed up in a conference or as the result of a conference.<sup>5</sup> The agreements are generally produced in court when the case is called on, and the president certifies to them and has them filed, and they operate—are enforceable—as an award.<sup>6</sup> In one long case, where the Court was faced with a dispute in ten tramway undertakings, no less than eight of the undertakings arranged agreements during the course of the long hearing, with the assistance of the president given in frequent interviews with the parties in chambers.<sup>7</sup>

It must not be supposed that the desire for the assistance of the president or of the Court is confined to employees. At first there was a tendency on the part of employers, individually and in association, to resent interference, as preventing the employers from carrying on, as they said, their own business in their own way. But

<sup>1</sup> Seamen, 4 Com. Arb. 108 (1910); 5 Com. Arb. 147, 154 (1911); Fruit-growers, 5 Com. Arb. 37, 183 (1911); 6 Com. Arb. 61, 62 (1912); Steamboat Enginemen, 6 Com. Arb. 60 (1912); Bakers, 7 Com. Arb. 257-258 (1913).

<sup>2</sup> Export Butchers, 4 Com. Arb. 82, 87 (1910); Glass Bottle Makers, 6 Com. Arb. 176 (1912); Steamboat Enginemen, 7 Com. Arb. 37 (1913); Bakers, 7 Com. Arb. 257-258 (1913).

<sup>3</sup> Export Butchers, 7 Com. Arb. 52-54 (1913).

<sup>4</sup> Section 19 *d*.

<sup>5</sup> Engine Drivers, 6 Com. Arb. 126 (1912); Glass Bottle Makers, 6 Com. Arb. 176 (1912); 7 Com. Arb. 43 (1913); Seamen (as to manning), 7 Com. Arb. 2 (1913); Journalists, 7 Com. Arb. 112, 113 (1913); Liquor Trade, 6 Com. Arb. 129 (1912); 7 Com. Arb. 254 (1913).

<sup>6</sup> Section 24.

<sup>7</sup> Tramways, 6 Com. Arb. 130, 140 (1912); and see Journalists, 7 Com. Arb. 112, 113 (1913).



facts have been too strong for them. Employers now frequently request the president to intervene and to summon a conference in order to prevent a stoppage of work.<sup>1</sup> They seek regulation, by agreement or award, in order that they may not find their plant lying idle and their business at a standstill, and, in some cases, a season lost.

Perhaps it will be well to give a concrete case. There is in Victoria a great butchering trade in lambs for export, involving, I believe, more than a million pounds per annum. The lambs are sent down to Melbourne in the spring,—September or October,—and unless they are butchered at once they deteriorate in condition and the season is lost. The men suddenly refused to go to work at the old rates; telegrams flew up to the country settlements to stop trucking any more lambs; the settlers were faced with the prospect of losing their market, and the storekeeping and incidental industries with the prospect of grievous loss. It so happened that the same demand was made on employers in New South Wales, so that there seemed to be a two-state dispute, which gave jurisdiction to the president. A conference was summoned at the request of the employers, the men induced to go to work under the conditions already in operation on a promise that the Court would arbitrate and make the award retrospective to the resumption of work, and the season was saved.<sup>2</sup> The parties prepared themselves peacefully to discuss their differences before the Court, but—this is the point—*the work went on*.

Another concrete case, showing the desire of both sides for definite regulation of conditions by the Court, is that of the Ship's Officers. The men in their demands had been too specific; the High Court had decided that the dispute must be treated as confined to the specific demands made and that the Court of Conciliation could not prescribe a remedy for any grievance different from that remedy demanded. The Court of Conciliation found that the granting of the demands as asked would tend to promote strife rather than peace in the industry

<sup>1</sup>Seamen, 4 Com. Arb. 108 (1910); 5 Com. Arb. 147, 154 (1911); Fruit-growers, 5 Com. Arb. 37 (1911); Waterside Workers, 6 Com. Arb. 3 (1912); Glass Bottle Makers, 6 Com. Arb. 176 (1912); Liquor Trade, 7 Com. Arb. 254 (1913); Export Butchers, 7 Com. Arb. 52 (1913); Victorian Stevedoring Co., 5 Com. Arb. 1 (1911).

<sup>2</sup>Export Butchers, 7 Com. Arb. 52, 54 (1913).

and stated its difficulties to the parties. Both parties were so anxious for a definite arrangement of conditions that they consented to embody in an agreement *any terms whatever that the president thought proper*, whatever the ambit of the dispute, whatever the jurisdiction of the Court. The president accordingly continued the hearing of the case and drew up an agreement which both parties signed and which they have both loyally observed.<sup>1</sup>

There is such a strong desire for the assistance of the machinery of the act that on several occasions an attempt has been made by employers, with or without the concurrence of employees, to induce the president to intervene in cases in which he has had to refuse his assistance on the ground that the dispute does not extend beyond one state and must be dealt with, if at all, by state authorities.<sup>2</sup> Quite recently the president has had, however, to make an exception to his rule not to meddle, even by consent, with matters outside his jurisdiction. There was a dispute between laborers and artisans on the one side and the commonwealth government on the other as to conditions of labor in the construction of a naval base in Western Port, Victoria; all parties signed a submission to arbitration, leaving everything to the determination of the president as in a voluntary arbitration. In view of the serious effects of a stoppage of the works in time of war, the president consented to act, heard the parties, and gave an award, and the parties are peacefully acting in accordance with it.<sup>3</sup>

But the course of the Court, like the course of true love, does not always run smooth. It has to meet some bitter opposition. Sometimes the opposition comes from a union of employees—generally a union which avowedly accepts the doctrine of the “class war” and aims at “the emancipation of labor by the abolition of the wage system.”<sup>4</sup> I have even seen a cartoon in a labor newspaper showing a laborer walking towards a gate marked “Freedom,” and a bulldog with a collar marked “Arbitration” bars his path. It is but fair to say that this cartoon appeared in a state which has a local arbitration court. But the attacks on the Court and its awards are, of course,

<sup>1</sup> Ship's Officers, 4 Com. Arb. 89, 91 (1910); Hairdressers, 6 Com. Arb. 1 (1912).

<sup>2</sup> Victorian Stevedoring Co., 5 Com. Arb. 1 (1911).

<sup>3</sup> Naval base—not reported.

<sup>4</sup> Fruit-growers, 6 Com. Arb. 61, 65, 78 (1912).

generally made from the side of employers, many of whom naturally resent any curtailment of their powers. The applications for prohibition against the president have been sometimes in part or temporarily successful. Prohibition is applied for because of some alleged excess of the Court's jurisdiction, and the argument generally turns on the questions, Was there a dispute? and, if there was, Did it extend beyond one state? Sometimes the argument turns on the validity of some section of the act. The proceedings are very long and very costly, and it is astonishing what a wealth of learning is involved in the meaning of the word "dispute" and the words "extending beyond the limit of any one state." The discussions occupy a very considerable proportion of the Commonwealth Law Reports, but they would not interest those for whose information I write this article. The legal discussions do not affect the principles or methods of action of the Court of Conciliation in cases where there is jurisdiction.

It has to be admitted that the awards, in nearly all cases, have been made in a period when the cost of living is rising and that therefore they have generally increased the existing minimum rate. The Court found, about 1911, that the cost of living was substantially increasing, but it refused to raise the basic wage until the increase could be quantitatively stated.<sup>1</sup> It suggested the expediency of official statistics on the subject, and the Commonwealth Statistician now furnishes periodically statistics which have materially assisted the Court. According to the Commonwealth Statistician, the cost of living, taking Australia as a whole, has increased by 25 per cent from 1901 to 1913. For such necessities as could be bought in 1901 for £1 one must now pay 25 s.<sup>2</sup> What will happen if the cost of living should decrease—if the minimum for the basic or living wage shall have to be lowered? It is a fair question, but it is for the future to give the answer. I wish to confine my words to my personal experience. Yet there have been cases in which the Court has refused increases or has actually decreased the minimum rates, and the employees have listened to the reasons and loyally submitted. In the case of the Shearers<sup>3</sup> the rates for shearing, 24 s. per 100, as fixed by my predecessor, were not increased; and the strongest union in Australia,

<sup>1</sup> Engine Drivers, 5 Com. Arb. 9, 14, 16 (1911).

<sup>2</sup> Postal Electricians, 7 Com. Arb. 5, 12 (1913).

<sup>3</sup> Shearers, 5 Com. Arb. 48 (1911).

the Australian Workers' Union, acquiesced. In the same case the Court found that too high minimum rates had previously been fixed for wool pressers and lowered them, stating its reasons. There was no strike, no refusal to work, no expression, that I know, of discontent. In the case of the Builders' Laborers<sup>1</sup> the Court fixed lower rates for Ballarat and Bendigo than for Melbourne, and lower rates for Melbourne than for Sydney, all because of differences in the cost of living. The Union leaders were troubled because these cities had always maintained the same "union rate," but they told the members of the Union the Court's reasons, and there was peace. Again, in the same case the Court fixed for Melbourne a lower minimum rate for scaffolders and demolishers than had been previously fixed by the wages board,—1 s. 3½ d. per hour instead of 1 s. 4½ d. per hour,—and the men submitted. The truth is, I think, that if the men secure the essentials of food, shelter, clothing, etc., they are not so unreasonable as is sometimes supposed. They do not love strikes for the sake of strikes, and the great majority are generally quite willing to submit to reason if they feel that they are reasonably treated.

This article is confined, as I stated at the beginning, to the Federal Court of Conciliation and to my own actual experience in connection therewith. But American readers should know that in each of the six Australian states there is some wages-board system under the state law or some industrial or arbitration court. Victoria was the first state to adopt a system of wages boards, about 1896, and her example has been more or less followed in Queensland, South Australia, and Tasmania. Western Australia has an arbitration court, and New South Wales has a combination of the two systems—wages boards and an industrial court. There is no organic connection between the state systems and the federal system. The object of the wages boards is primarily to prevent sweating or underpayment; the object of the Federal Court is to preserve or restore industrial peace. The Federal Court deals with disputes, as such, and prescribes wages etc. merely as incidental to the prevention or settlement of disputes; the wages board prescribes minimum wages and has no direct relation to disputes. But, as is obvious from the nature of the case, the systems often overlap. A wages board consists,

<sup>1</sup> Builders' Laborers, 7 Com. Arb. 210 (1913).

generally, of representatives selected by employers and of representatives selected by employees in equal numbers, with a neutral chairman. There is not, I think, any fixed principle stated by the legislatures for the guidance of the boards in prescribing the minimum wage. At one time the Victorian legislature enacted that the minimum wage should not exceed the wage paid by "reputable employers," but this negative provision has been found unsuitable and repealed. The wages boards cannot deal with all industrial conditions; the Federal Court can deal with any industrial condition that comes into dispute. The wages boards do not publish the reasons for their determinations; the Federal Court does. As a result I find that the wages boards frequently look for guidance in their action to the reasoning of the Federal Court. The wages boards, within the limits of area assigned to them, bind all employers by their determinations; the Federal Court can only bind those who are concerned in the dispute. The wages boards, being state creations, are very much affected by the consideration of interstate competition.<sup>1</sup> In dealing with boot factories the New South Wales tribunal would have fixed the minimum for journeymen at 9s. per day but for the fact that the rival factories of Victoria had a minimum of 8s. per day. The Federal Court, when asked to intervene, was able, as an Australian tribunal, to bind the employers of both states to pay the 9s. per day.<sup>2</sup> Another weakness in the wages-board system is that employees in the presence of an employer or a possible employer have not the independent position which would enable them to act fearlessly. This is especially true where, as in the case of city tramways, there is only one undertaking where a tramway man can get employment. In the case of the Brisbane tramways it appeared that it was the manager who, as a member of the wages board, made all the proposals, and that every one of his proposals was carried unanimously.<sup>3</sup> Again, the decision of the wages board of one state is frequently inconsistent with the decision of the wages board of an adjoining state. There is no one final coördinating authority, as in the case of the Federal Court, and the result is often that contrasts appear and dissatisfaction arises and industrial trouble. For instance, a large mining

<sup>1</sup> Engine Drivers, 5 Com. Arb. 9, 17 (1911).

<sup>2</sup> Boot Factories, 4 Com. Arb. 1, 8 (1910).

<sup>3</sup> Tramways, 6 Com. Arb. 130, 149 (1912).

district, of essentially the same physical and industrial character, with the same cost of living, is divided by the artificial boundary line between two states. The wages board of one state prescribed one set of wages and conditions; the wages board of the other state prescribed a lower set. The consequences were disastrous.<sup>1</sup> A New South Wales wages board gave, in the case of builders' laborers,<sup>2</sup> the lowest rate to scaffolders and the highest to hodmen. The Victorian wages board gave the highest rate to scaffolders. The New South Wales board gave a low rate to demolishers; the Victorian board gave the highest rate. The Federal Court, when it came to act, prescribed a flat minimum rate for all the laborers, and the employees were satisfied. They knew that a man of exceptional value as a scaffolder or in any other capacity would still be able to demand and obtain a rate higher than the minimum. It is often said that the minimum rate tends to become the maximum, but there has been no proof of such tendency as yet. Moreover, the wages boards are often not suitably grouped, and there is a tendency to ignore the interests of unrepresented minorities, of employers as well as of employees. For example, there was in Victoria a "Hay, chaff, wood, and coal board," composed, as to employers, of ordinary wood, coal, and produce retailers. They managed to get a determination which kept their own yardmen at low wages but fixed a disproportionately large minimum for yardmen who handled coke, because the gas company of the city was practically the only vendor of coke and it was not represented on the board.<sup>3</sup> But most of these defects, and other defects which I could point out, are not of the essence of the system and will probably be removed or obviated in the light of experience. Employers have assured me that they welcome the fixing of minimum rates by the boards or by the Court. They know now definitely what they must pay, and so long as they pay it they feel no more the incessant nagging of unions or employees as to wages. Nor can any impartial person deny the immense relief which the system of wages boards has afforded to thousands of the most helpless families throughout Australia. Wages boards constitute one of the most useful factors of those which tend, in the words of James Russell Lowell, to

<sup>1</sup> Engine Drivers, 7 Com. Arb. 132, 145 (1913).

<sup>2</sup> Builders' Laborers, 7 Com. Arb. 210 (1913).

<sup>3</sup> Gas Employees, 7 Com. Arb. 58, 65 (1913).

"lift up the manhood of the poor" and to provide proper sustenance and upbringing for the children of the nation.

Perhaps I should add here that up to the present I have not been able to trace any increase of price of commodities to the fixing of minimum wages. It is not the function of the Court to ascertain the truth as to the causes of increased prices, but the Court watches for any side lights on this important subject. In one case, I believe, a wages board raised the wages of milk carters by 1s. per day, and the milk vendors at once raised the price of milk by 1d. per quart. For 100 quarts per day this would mean an increase of receipts to the amount of 8s. 4d. per day, so that the milk vendors had raised the price of milk far beyond the amount necessary to recoup them for the additional wages.

It will be asked, however, What is the net result of the Court of Conciliation? Have strikes ceased in Australia? The answer must be that they have not. There have been numerous strikes in Australia, as elsewhere. But since the act came into operation there has been no strike extending "beyond the limits of any one state." Those who are old enough to recall the terrible shearers' strike and seamen's strike of the nineties, with their attendant losses and privations, turbulence and violence, will realize how much ground has been gained. The strikes which still occur are strikes within a single state, and disputes within a single state are outside the jurisdiction of the Court. It can be safely said that since the act every dispute "extending beyond the limits of any one state" comes before the Court or the president, either on the application of parties to the dispute or on the initiative of the officers of the Court.<sup>1</sup> Moreover, with the exception of one doubtful case, in which I was not personally concerned and do not know the full particulars, there has been no instance of an award's being flouted by the employees, no instance of the employees' refusing to work under an award. There have been cases in which parties have differed in the interpretation of an award in its application to exceptional circumstances; there have been instances of inadvertent disobedience; and these cases have sometimes come to the courts in the form of an action for a penalty. But these were cases in which the award was treated as regulating the rights of the parties, not treated as a thing to be rejected.

<sup>1</sup>Section 19.

In 1911 Parliament intrusted to the Court another formidable function—the settling of wages, hours, and conditions of labor for federal public servants. This function does not rest on the constitutional power to make laws for conciliation and arbitration in industrial disputes;<sup>1</sup> it rests on the absolute power of the commonwealth in relation to its own servants. The public servants are allowed to group themselves in unions, “organizations,” as they think fit and to approach the Court with a plaint. It seems at first sight curious that Parliament should intrust any tribunal with a power of adjudicating on such subjects, but Parliament has been careful to retain the final control of the commonwealth finances. For the award does not come into operation till the expiration of thirty days after it has been laid before both Houses, and Parliament can, if it sees fit, pass a resolution disapproving of the award. This remarkable jurisdiction over public servants deserves a study all to itself, and I can only say, though there have been several important awards under it, no award has yet met with the disapprobation of Parliament, and no resolution of disapproval has even been tabled.

In conclusion I may state that I am not unaware of the far-reaching schemes, much discussed everywhere, which contemplate conditions of society in which the adjustment of labor conditions between profit-makers and wage-earners may become unnecessary. Our Australian Court has nothing to do with these schemes. It has to shape its conclusions on the solid anvil of existing industrial facts, in the fulfillment of definite official responsibilities. It has the advantage, as well as the disadvantage, of being limited in its powers and its objects. Its objective is industrial peace, as between those who do the work and those who direct it. It has no duty, it has no right, to favor or to condemn any theories of social reconstruction. It neither hinders nor helps them. But it is obvious that even if all industries were to be carried on under state direction, industrial peace would be as vitally important as it is now, and that it could not be secured without recognition of the principle which the Court has adopted, that each worker must have, at the least, his essential human needs satisfied and that among the human needs there must be included the needs of the family. Sobriety, health, efficiency, the proper rearing of the young, morality, humanity, all depend greatly on family life, and

<sup>1</sup> Article XXXV, Section 51.



family life cannot be maintained without suitable economic conditions. The reasoning which has lately committed to the Court the function of settling conditions of labor for public servants would not be less, would be even more applicable, if the state had more servants than it has.

Yet, though the functions of the Court are definite and limited, there is opened up for idealists a very wide horizon, with, perhaps, something of the glow of a sunrise. Men accept the doom, the blessing, of work; they do not dispute the necessity of the struggle with nature for existence. They are willing enough to work, but even good work does not necessarily insure a proper human subsistence, and when they protest against this condition of things they are told that their aims are too "materialistic." Give them relief from their materialistic anxiety, give them reasonable certainty that their essential material needs will be met by honest work, and you release infinite stores of human energy for higher efforts, for nobler ideals, when

"Body gets its sop, and holds its noise, and leaves soul free a little."

HENRY BOURNES HIGGINS

HIGH COURT OF AUSTRALIA, MELBOURNE

## XLI

### WAGE THEORIES IN INDUSTRIAL ARBITRATION<sup>1</sup>

LABOR disputes in modern industry may be divided generally into those which involve wages and those which involve a principle. A principle cannot be arbitrated. If it is arbitrated it ceases to be a principle. To submit it is to surrender it. There is therefore a distinct category of industrial disturbances that are not susceptible of adjustment by any method which denies to the disputants the direct participation in the settlement. But the great group of labor differences, in which principle is not involved, may be adjusted, when other peaceful means fail, through intervention of a third party. The principle of industrial arbitration is an assumption that all disputes involving wages are capable of adjustment if undertaken in proper time. The meager experience of the United States and the broader experience of other countries have promised to find in the intervention of an arbitrator clothed with definite powers of adjudication a vigorous aid to the maintenance of industrial peace. The distinctive principle of arbitration, which in the practice of a quarter of a century ago was an experimental social novelty, has received, in some form, almost world-wide acceptance. And the day is far from prospering the culture of the methods of peace.

A judgment of the validity of the wage theories underlying the methods of industrial arbitration must reflect one's conception of the place of the individual man in the scheme of economics. Is the man himself the end of economic activity or a means to the end, a factor of production? The first concept incorporates the idea of social welfare; the second involves a doctrine of individual self-interest: let survive him who can. The theoretical defenses of industrial arbitration, as I propose to review them, have been usually in terms of social welfare or of public policy. In the scientific criticisms there has been evident, on the other hand, an essentially

<sup>1</sup>From *American Economic Review*, Vol. VII (1916), pp. 324-342.

individualistic, competitive conception—one which speaks not the language of general immediate social interest but rather that of the competing entrepreneur to whom wages are only an item of cost, to whom labor appears more or less impersonal. Of this general distinction, which is by no means without exception, there is ample evidence in arbitration precedents.

The two ideals of distributive justice, one social, the other individual, have not always—or even, perhaps, usually—coincided. The aim of this paper is to suggest a judgment of the validity of wage theories in arbitration as a part of a unified *theory of distribution*. To this end it is well to examine the actual precedents as they are to be found in the different industrial communities. It is necessary, therefore, for science, to consider wages as the individual enterpriser in the business world views them. But whether or not a strictly economic justification for wage arbitration can be found is not finally indicative of its proper place in the scheme of modern social legislation. Ulterior social considerations may and often do, in a dynamic economy, far outweigh those that are purely economic. When the fundamental conditions of economic life are in rapid and continuous flux, ideal schemes must sometimes be held in abeyance in favor of immediate remedial expedients.

To the term "industrial arbitration," unfortunately, no uniform meaning is attached. Generically it denotes the intervention of a third party to aid in the settlement of disputes between employers and employees. In this sense it includes mediation of whatever kind, conciliation, and arbitration in the narrower and now the most generally accepted sense, in which it is used in this paper—namely, the determination of an industrial dispute by a third party independent of direct participation by the immediate disputants. Mediation and conciliation are merely refined methods of collective bargaining.

Moreover, arbitration may be voluntary or compulsory. Both the reference of the dispute to an arbitrator and the acquiescence in the terms of his award may be voluntary; or the reference may be voluntary and the award compulsory; or both the reference and the award may be compulsory. It is only arbitration providing for a decree binding upon the disputants with which we are concerned. Arbitration with voluntary award is a whim. An award unsatisfactory to either party becomes binding upon neither.

Sidney and Beatrice Webb say: "The essential feature of arbitration as a means of determining the conditions of employment is that the decision is not the will of either party, nor the outcome of negotiations between them, but the fiat of an umpire or arbitrator."<sup>1</sup> To some the statement will not be acceptable that conciliation is simply the collective bargain in a more polite and usually a more effective form. Many competent critics, moreover, see in the processes of intermediation the promise of the ultimate future maintenance of industrial peace. To some, indeed, the implication that agreement between the owner of the instruments of production and the organized group of laborers seeking employment will continue to be by "higgling" or by the "long jaw" is even offensive. These latter terms have not had a connotation uniformly synonymous with peace in industrial relations. Whatever be our sentimental attachment to words, it is nevertheless obvious that the fundamental distinction between the judicial types of industrial settlements is the distinction between collective bargaining on the one hand and the complete elimination of collective bargaining on the other hand. Conciliation means peaceful mediation with the power of ultimate settlement residing still with the two parties to the issue. Arbitration is inconsistent with bargaining: the power of settlement resides in the third party; the terms must be obligatory upon the disputants. Fundamentally, the distinction is not between conciliation and arbitration but between bargaining and adjudication.

It is not my purpose to estimate the relative efficacy of each of the judicial methods of industrial peace. From the standpoint of social policy conciliation is a convenient and often a very effective means of securing a meeting between a supercilious, often relentlessly independent, employer and the willing representatives of a union of employees, or between the representatives of a clamorous and often vindictive and unreasonable union and a willing employer. But all this has to do only with the way in which the machinery of collective bargaining is set in motion. There is implied no distinct wage theory. Not so in the case of arbitration. There the customary methods of wage determination are abolished. The essential

<sup>1</sup> *Industrial Democracy*, Vol. I, p. 222.

characteristic is the binding award rendered<sup>1</sup> not by the immediate parties but by a supposedly impartial third party.

The word "arbitration" makes an initial sentimental appeal. It speaks the language of distributive justice; it calls for the acme of fairness between men. But practically it is doubtful whether the arbitrator of an industrial dispute can convince even himself of what is justice in any particular case. Equity is unluckily not self-determining. With how much the more difficulty will he satisfy the rival claimants! In the historical development of arbitration practice no criterion of justice has been generally accepted other than the vague admission that the award must not be "contrary to public welfare."<sup>2</sup> The perplexity of an experienced, fair-minded arbitrator is illustrated in Judge Ellison's determination of a wage dispute in the Yorkshire Coalminers' case in 1879:<sup>3</sup>

It is for [the employers' advocate] to put the men's wages as high as he can. It is for [the men's advocate] to put them as low as he can. And when you have done that it is for me to deal with the question as well as I can. But on what principle I have to deal with it I have not the slightest idea. There is no principle of law involved in it. There is no principle of political economy in it. Both masters and men are arguing and standing upon what is completely within their rights. The master is not bound to employ labor except at a price which he thinks will pay him. The man is not bound to work for wages that won't subsist him and his family sufficiently, and so forth. So that you are both within your rights. . . .

The rapid development of trade-unionism during the period from the forties to the seventies, especially in Great Britain, and the formation of employers' associations to combat the rising tide early resulted in the development of irregular negotiations administered largely through strikes. In many industries were instituted so-called arbitration proceedings such as that cited in the above illustration. But for many years much of the arbitration was concerned with voluntary award, essentially resembling conciliation. Where

<sup>1</sup>Until within approximately the past twenty-five years the principle of arbitration compulsory by law was practically unknown. Its most elaborate trial has been in Australasia, the modern laboratory of democratic social experimentation.

<sup>2</sup>Webb, *Industrial Democracy*, Vol. I, p. 229.

<sup>3</sup>Report of the South Yorkshire Collieries Arbitration, p. 49.

arbitration practice prevailed no formula or consistent theory of wages was ever recognized to guide the determination. In the North-umberland Coalminers' Arbitration case, for example, in 1875, the operators demanded a 20 per cent reduction in wages. Their plea was based on the rapid decline in coal prices since 1871, evidenced by "impartial" data drawn from the operators' accounts. Despite the fact that the period before the year 1871 had been one of rapidly rising prices and that wages always tend to lag behind prices during such a period, the employers claimed that their profits for that year (1871) were "fair" and "normal." To this the miners objected. They asserted that the policy declared by the operators would force the employees to shoulder all the consequences of an adverse market. They denied that the profits in 1871 were normal and challenged the operators' main contention that the prices of coal must fluctuate "in exactly the same ratio as wages in order that the profits of coal owners may remain the same."<sup>1</sup>

The arbitrator in his decree in this case discarded all the principles advocated before him and made the award on a wage-fund basis, a curious promiscuity of principles supposed to govern wages. He found that wages had increased since 1871; that prices had fallen. A reduction of wages of from 10 to 12½ per cent was awarded, but not because the current of prices was failing to keep abreast of the increase in wages. The arbitrator found that the number of men in the industry had increased. Where there were now fourteen men there had been formerly but ten. From the "total wages fund" he found therefore that each man could expect only one fourteenth instead of one tenth. The award concluded:<sup>2</sup> "The restoration of economy in production cannot be brought about by abating the rate of wages only, or indeed mainly, but must be accomplished by reducing the number of men."

During the next twenty years the emphasis shifted to the principle of the sliding scale: that wages should be determined by prices. The settlement of the proper basis and the administrative details of such a scheme occasioned in many industries frequent resort to arbitration. The inherent tardiness with which wages followed prices was a constant source of aggravation to employees during periods of rising

<sup>1</sup> *Miner's National Record*, Vol. VII, pp. 108, 109; reprint.

<sup>2</sup> *Ibid.* p. 109; also cf. *seq.*

prices and to employers during periods of stagnation or of depression.<sup>1</sup> The great stimulus to industrial arbitration and the extension of the method of compulsory award have come, however, during the last generation, from the advocacy of the "living" or minimum wage as a first charge upon all industry. The unionist promulgators of this doctrine in England, in America, and in the British possessions, prompted by ideals of general social welfare tempered somewhat with class-consciousness, failed to take account of the economic principle that in the long run general wages are fixed by prices and not prices by wages. Yet the minimum wage, in so far as any such has existed, has been the guiding principle in much of the recent wage arbitration, especially in Australasia.

The indiscriminate way in which wage theories have been taken up and discarded is attested by the recent American arbitration, instituted in 1910 under the provisions of the Erdman Act, between the Order of Railway Conductors and the Brotherhood of Railroad Trainmen as appellants and the Baltimore and Ohio Railroad as appellee. This action resulted in the well-known Clark-Morrissey award, the terms of which were subsequently extended to most of the railroads in the Eastern territory. The unions in this case, as also in the similar case three years later against all the Eastern railroads for a still further increase, demanded rates of pay equal to those paid in the Western territory. These were almost uniformly higher.

(1) In the name of standardization (that is, to abolish the differential);

(2) On account of increased cost of living;

(3) On account of increased risk, labor, and responsibility;

(4) On account of the increased productivity of the work of the train crew;

(5) On the ground that the profits made by the railroads in recent years have increased out of proportion to wages.<sup>2</sup>

The unions urged the abolition of the differential between the West and the East on the general grounds that "railroading *per se* is worth just as much in one part of the country as in another."<sup>3</sup> A minor exception was recognized in the case of the Rocky Mountain territory.

<sup>1</sup>A. E. Suffern, *Conciliation and Arbitration in the Coal Industry of America*, pp. 278, 279.

<sup>2</sup>Award, p. 11.

<sup>3</sup>*Ibid.* p. 11.

The argument of the unions thus embraced a miscellany of wage theories: (1) a "cost of service" theory, involved in equal sacrifice; (2) a "standard of living" theory; (3) a conglomeration of "risk," "sacrifice," and "value" theory; (4) a "productivity" theory; and (5) an "opportunity" theory, on the ground that the fruits of prosperity should be distributed. The railroads contented themselves with contesting the claims of the unions. No new wage theories were added by them to the list. How much the arbitrators were impressed by the wage principles addressed to them is shown in the statement of the theory underlying the award that "the employee will be paid for all the service he renders, and the company will not pay for any service that it does not get."<sup>1</sup> In the later award of 1913, involving the Eastern railroads, the arbitrators stated that although they did not found their action entirely upon the increased cost of living, they regarded it as basic.<sup>2</sup>

These instances are only illustrative of the nonsuccess of arbitration precedents in establishing, after a generation's experience, uniform theoretical standards for the adjudication of wage controversies. Narrowly economic considerations have been confused in the presence of broadly social considerations, and the class-conscious representations of employees and of employers have been confused with public welfare.

The conditions which confront the industrial arbitrator are complex and often embarrassing. Finding no generalized precedents he is compelled to adopt such unsatisfactory rules of procedure as may seem suitable for the immediate case. He is furnished with conflicting data. Often none of the evidence is of disinterested origin. The arbitrator cannot isolate the precise share of the value of the joint product that is imputable to labor, nor can he determine the value product specifically attributable to the capital. Of serious help he gets none from the socialist who tells him that labor *produces* the entire product. But little more is had from the economist who assures him that the laborer produces what he gets.

Failing to secure from these sources any workable criteria, he falls back upon the general principles of distributive justice. But even here the perplexities are scarcely diminished. The arbitrator

<sup>1</sup>The Clark-Morrissey Award, p. 210.

<sup>2</sup>Award, p. 34.



must determine, for example, whether the industry can afford to pay the increased wages that are demanded. Clashing interests do not encourage agreement on such a question. What are "fair" wages? "fair" profits? Is the rate of profits, once it is determined, to be applied to the par value or to the market value of the securities or to some other base? Or may the arbitrator use his office to knock the water out of inflated corporate issues? Shall the basis of rate determination be the actual investment in the enterprise? or shall allowance be made for subsequent changes, for example in the general price level or the cost of reproduction of the plant? Is good will entitled to profit? If so, in what proportion? The capitalization of an elastic, intangible asset, such as good will, can easily be construed (as it unfortunately too often is construed) into a social or ethical justification of the income itself from which this capitalization is derived. Against such a form of question-begging the arbitrator has often found difficulty in defending himself.

Even after these issues have been settled and the conflicting interests appeased the arbitrator finds that profits vary with the several firms. The award involves, therefore, the determination of the right and the expediency of maintaining in the field the least efficient producers, whom the compulsory payment of higher wages will drive out. Moreover, the arbitrator cannot estimate the practicability of shifting the higher wages to consumers in the form of higher prices. As an impartial outsider he does not know the business intimately. Even if he did know it he could not forecast results with assurance. The extent to which an increase in wages can be shifted depends upon the character of the product involved: the availability of substitutes, the elasticity of the demand for it, whether the initial price was or was not a monopoly price, and kindred considerations.

It is small wonder that the Anthracite Coal Commission, acting in 1902 at the instance of the vigorous and withal the doubtfully legal executive action of President Roosevelt, declined to listen to testimony concerning the ability of the several companies to pay the wages demanded. It could not have satisfied itself, nor the employers, nor the miners. The task of the Commission was the restoration of industrial peace. To this task it addressed itself. Upon the companies devolved the responsibility of accommodating their

business to the terms of the award. The settlement was, however, an avowed makeshift. The agreement was extended from 1912 for an additional four years, expiring March 31, 1916.

This brief catalogue of some of the important issues shows how impracticable must be the judicial determination of an award or of a series of awards uniformly consistent with the principles of distributive justice. In practice, in most cases and in most countries, the umpire has abandoned the quest for a theoretically defensible decision. He often claims that he is confronted with a situation and not with a theory. Demands and counterdemands he finds; assertions and denials; complaints and defenses. These are tangible. It is impossible for both parties to be right; nor can either be shown to be wrong. In actual wage-arbitration practice in Australia, Europe, and America the most widely used formula has been "split the difference." That this is so is the familiar impatient criticism thrust at the Erdman Act in the United States. This eclectic process meets with inevitable disapprobation from one side or from both. It has been the frequent cause of public ridicule of the judicial methods of industrial peace. In doing substantial justice to both parties the arbitrator does strict justice to neither.<sup>1</sup>

As an instrument for the distribution of the social income arbitration has few consistent theoretical defenses. Yet practically all important awards have involved directly a wage theory of some sort which can be isolated. Mr. Justice Higgins, the president of the Australian Arbitration Court, in deciding the mine workers' dispute in 1908 elaborately discussed the grounds for the award of increased wages:<sup>2</sup>

Now, the first condition in the settlement of this industrial dispute as to wages is that, at the very least, a living wage should be secured to the employees. I cannot conceive of any such industrial dispute as this being settled effectively which fails to secure to the laborer enough wherewith to renew his strength and to maintain his home from day to day. He will dispute, he must dispute, until he gets this minimum. . . . Nor do I see any reason yet for modifying my view of a living wage as expressed in the Harvester case (2 Comm.

<sup>1</sup> Because of general dissatisfaction with this unscientific method of splitting differences, England has attempted to require in a large category of disputes a Yes or a No, as in the courts of law, with no attempt to palliate both sides.

<sup>2</sup> The Barrier Branch of the Miners' Association Case, 1908, p. 13.

Arb. Rep.) and in the Marine Cooks' case (2 Comm. Arb. Rep.). In finding the living wage I look, therefore, to find what money is necessary to satisfy the normal needs of the average employee regarded as a human being in a civilized community.

To this theory of the "living wage" based on the prevailing standard of living the Australian court has tenaciously held. Asserting that the requirement is primary of a wage sufficient "for the healthy subsistence of an average family," the Court in the Barrier Miners' case continued:

First of all, is an employer who is poor to be ordered to pay as high wages as the employer who is rich? Now, without laying down a rule absolute and unconditional under all circumstances, I strongly hold the view that, unless the circumstances are very exceptional, the needy employer should, under an award, pay at the same rate as his richer rival. It would not otherwise be possible to prevent the sweating of employees, the growth of parasitic enterprises, the spread of industrial unrest—unrest which it is the function of this Court to allay. If a man cannot maintain his enterprise without cutting down the wages which are proper to be paid to his employees—at all events, the wages which are essential to their living—it would be better that he should abandon the enterprise.

Mr. Justice Gordon, in the Brushmakers' case in Adelaide, said: "If any particular industry cannot keep going and pay its employees at least 7s. a day of eight hours, it must shut up." In the Collie Miners' case Mr. Justice Burnside refused the application of the employers that the minimum wage be lowered: "If the industry cannot pay that price it had better stop and let some other industry absorb the workers."<sup>1</sup>

Again Mr. Justice Higgins defined the positive significance of the living-wage theories in arbitration:

It is necessary to keep this living wage as a thing sacrosanct, beyond the reach of bargaining. But when the skilled worker has once been secured a living wage, he has attained nearly to a fair contractual level with the employer, and, with caution, bargaining may be allowed to operate.<sup>2</sup>

These excerpts represent the recent attitude of the important Commonwealth Arbitration Court of Australia. Its jurisdiction under the

<sup>1</sup>6 W. A. Arb. Rep. 84, pp. 17, 18.

<sup>2</sup>*Ibid.* pp. 18, 19.

act of 1904 extends to the determination of wages, but only in those cases in which interstate interests are involved.

The act providing for compulsory arbitration in New South Wales was passed in 1901. It was copied from the New Zealand law, and its primary purpose was to stop strikes. In a letter to the special labor commissioner of the state of California Mr. Justice Hayden of the Arbitration Court seriously questioned the wisdom of any compulsory substitute for collective bargaining:

If there are weak classes to be imposed upon . . . and to whom it is in the highest degree just that a fair living wage should be awarded, there are also strong unions able, without the assistance of any tribunal, to win for themselves wages which rise as far above a fair living wage as those of the sweated classes fall below it. To take away from those men the weapon of the strike, and to impose upon them the compulsion of a peaceful award, is to enter at once upon difficulties of the gravest character.<sup>1</sup>

Whatever may have been the result in leveling down high wages, there can be no doubt that the leveling up of low wages in New South Wales has been even more apparent. In 1909, one year after the passage of the Industrial Disputes Act, which, by the erection of "industrial boards" to determine the conditions of employment in specified industries, reënforced the terms of the Compulsory Arbitration Act of 1901, the director of labor reported:

The opinion is fast gaining ground in industrial circles that greater benefits are likely to accrue from the operation of the act than could be expected from the methods of strikes. Strikes are rarely successful in obtaining all that is demanded, settlements being usually in the nature of a compromise. . . . Nor is this all. There are many of the smaller and less compact industries in which the operatives could hope for nothing whatever from a strike. . . . But under the act they are in as good a position, and have equal opportunities with the largest and strongest trades unions.<sup>2</sup>

Apparently arbitration has here had the effect essentially of increasing the bargaining power of the weaker unions in the presentation of their claims to the Court. The institution in 1908 of the

<sup>1</sup>Fourth Annual Report of Special Commissioner of Labor of the State of California, pp. 3, 4.

<sup>2</sup>See Report of Director of Labor to the Minister of Public Works of New South Wales, 1909, pp. 2 ff.

industrial boards gave extended jurisdiction over industrial conditions even before actual disputes had arisen.

It is interesting to note that the Department of Labor of New South Wales has found many more embarrassing complexities arising out of its attempts to secure standardization of wages in an industry than have been admitted by the Commonwealth Arbitration Court of Australia, cited above.<sup>1</sup> The industrial conditions antecedent to the passage of the Compulsory Arbitration Act of 1908<sup>2</sup> are described in the report for 1908-1909 of the Minister of Labor of New Zealand, in paraphrase:

Without question the arbitration act had excited disfavor. Even discounting the expressions of disapproval of chronic industrial malcontents the act was disagreeable to the great solid silent body of laborers. The executive practice of granting permits to work below the legal minimum wage and of granting exceptions to the operation upon employers of the terms of the award, the desirability of restoring function to conciliation boards, of terminating awards where strikes against the awards had taken place, of authorizing the Court to decline to make an award—these and other influences necessitated a considerable change to conform the law to modern opinion.<sup>3</sup>

The administrative privilege and the elasticity allowed under the old act of 1901 were the chief causes of its comparative failure. The extension in 1908 of the principle of compulsion,<sup>4</sup> both as to reference

<sup>1</sup>E.g. Mr. Justice Higgins, in the miners' case referred to above, said: "It is not difficult to see the danger to industrial peace involved when workmen performing the same work, with the same skill, in the same city, are not receiving the same remuneration. So that when the . . . Company ask me to fix by my award wages lower than are proper for the industry as a whole, and adduces as its reason the fact that its mine is now poor, and is becoming poorer, I cannot discern either justice or expediency in the request" (6 W.A. Arb. Rep. 84, pp. 18, 19).

<sup>2</sup>Voluntary arbitration had been introduced into New South Wales in 1896. Its total inadequacy led to the adoption in 1901 of the compulsory principle in an act due to expire by limitation on June 30, 1908. In 1908 was passed the Industrial Disputes Act. Victoria inaugurated the wage-board system in 1896, followed by South Australia in 1900, Queensland in 1908, Tasmania in 1910. Compulsory arbitration was adopted in 1902 by Western Australia and in 1904 by the commonwealth of Australia.

<sup>3</sup>Pp. 2, 3, *et seq.*

<sup>4</sup>It is to be noted that even this compulsory arbitration act permits, under very strict supervision, the payment of less than the legal minimum to old men and to incompetents, because these are not "worth" the minimum to the employer. The value theory of wages is here finally lugged in at the back door.

and to award, to the determination of the conditions of employment in specified industries as well as to the determination of active disputes referred to the Court has corrected many former inadequacies. The powers of the Court and the range of their application have been much strengthened by the recent Industrial Arbitration Act of 1912. The grounds for compulsion in New South Wales were plainly of a broad social and political character. Apparently no defense argued for the passage of the act indicated that its sponsors were concerned with or interested in its compatibility with consistent wage principles.

The initial guide in wage arbitration as practiced in Australia has been the living wage to the industrially fit. This wage is held to be a prior lien on the income of industry. The courts have occasionally admitted that for the workers it constitutes only the starting point. The men demand the living wage *plus* as much more as they can secure. This is a relapse to a value basis after all. The second principle is practicability: the wages bill must not be more than the industry can permanently absorb.<sup>1</sup> Third, the workers usually demand much more than they expect to get. The resulting practice is the compromise, to which attention has already been directed. Fourth, the minimum wage established by arbitration tends to become the standard wage.<sup>2</sup> The economic theory of compulsory arbitration as abstracted from the New Zealand precedents has been ably reviewed by Le Rossignol.<sup>3</sup> As applied to the discussion of wages, the principles there defined may be framed in the following paraphrase: The competitive system and collective bargaining have resulted in low wages, sweating, and strikes. Under the sweating system the worker receives less than a decent living wage. By the method of the strike force prevails over justice. Strikes and other forms of industrial warfare discommode the public. Such industrial methods should be eliminated by an impartial judicial determination. This has usually taken the form of a legal minimum wage.

<sup>1</sup> The practice of New Zealand has not evidenced so clearly as has that of the Commonwealth Court of Australia the principle of submerging the industry which cannot afford to pay "fair" wages. The latter looks to the elimination of this form of industrial parasitism.

<sup>2</sup> M. B. Hammond, "The Australian Experience with Wages Boards," in the *Survey*, Feb. 6, 1915, p. 12.

<sup>3</sup> "Compulsory Arbitration in New Zealand," in *Quarterly Journal of Economics*, Vol. XXIV (1910), pp. 682, 683.

But if the standard wage is attributed to the proficient worker, what provision is to be made for the superannuated or, more especially, for the relatively unemployable? Such are not "worth" so much to the entrepreneur. Can the principle of the value of service to the employer and the principle of a fixed legal minimum wage be reconciled? These considerations<sup>1</sup> lead to the circular reasoning with which industrial arbitration has been charged:

1. The living wage is relative to the economic position of the wage-earner.

2. The economic position of the wage-earner depends upon the wage which he has been receiving.

3. The wage which he has been receiving depends upon the value product attributed to the worker by the entrepreneur.

The living-wage theory, distinct from a value-wage theory, thus defined and applied, is a begging of the question.

In venturing an estimate of the merits of compulsory arbitration it must be noted that our laboratory has been confined, in the main, to Australasia. Differences in industrial development between countries may be adequate to nullify conclusions drawn from so limited territory. The comment of the *London Morning Post* of September 20, 1911, is perhaps not wholly inappropriate or unwarranted:<sup>2</sup>

In theory the idea of making arbitration compulsory and depriving employers and employees of the right either to lock out or to strike is attractive to autocratic minds. . . . The enforcement of any such law upon large bodies of disgruntled workmen is absolutely impracticable. To draw any analogy between the tiny disturbances of a new country like New Zealand and the titanic upheavals among the crowded millions of Britain's industrial workers is absurd.

Admitting, therefore, that its experience is not conclusive upon the other countries, the result<sup>3</sup> of the Australasian experiment with wage arbitration may be summed up: (1) The wages system has

<sup>1</sup> Among other social considerations are: The living wage "fair" for a single man is insufficient for the married man. Is the state therefore to regulate marriage and the number of children? Or is the married man to have a higher wage than the single man? Then which one will "hunt" for a job when times become less prosperous? But the protection of which one is the more important socially? Cf. *ibid.* pp. 684 ff.

<sup>2</sup> Quoted in U. S. Bureau of Labor Statistics, Bulletin No. 98 (1912), pp. 177-178.

<sup>3</sup> Cf. Hammond, *op. cit.* p. 18.

tended to rigidity. The direction of development has been from contract to status, or the exact reverse of Sir Henry Maine's juristic ideal of human progress. (2) The marginal, the most inefficient, entrepreneurs have obstructed wage increases. The New South Wales Court, unlike the Commonwealth Court of Australia, has usually made concessions to them. The unions, however, have urged the ostracism of such inefficiency as unfit for survival. (3) Wages during twelve years ending in 1907 increased 24 per cent; food prices during the same period increased 22.5 per cent. In only a few cases has an industry been unable to absorb its wages outlay as fixed by arbitration.<sup>1</sup> (4) Manufacturers are substantially agreed that compulsory arbitration has increased the costs of production. This cannot, however, be accepted as conclusive, since the entire period under observation has been one of generally rising prices. Dr. Victor S. Clark, formerly of the United States Bureau of Labor and a careful student of state experiments in Australasia, ventured the conservative opinion in this matter that "All regulations restricting the freedom of employers in conducting their business probably add to the cost of production."<sup>2</sup> A well-known arbitrator, since the passage of the compulsory law in 1894, stated that, "with possibly one exception, industries have not been hampered by the provisions of the act."<sup>3</sup>

It is a significant fact that wages in Australasia during much of the recent period of rapidly rising prices have increased, contrary to the general rule, as rapidly as, and during some years more rapidly than, the cost of living has increased. Of course this condition in the distribution of income has increased the workers' buying capacity in local markets, and so contributed to general high prices. These rising prices may yet prove to be a stumblingblock. The farmers of New Zealand, for example, sell their goods in the foreign markets, competing with similar goods produced in other countries where the

<sup>1</sup>This is the official claim of the colonial parliament of New Zealand: "We can only add our personal testimony to that given by every careful investigator into the circumstances of New Zealand, that there is so far no evidence of injury to its industrial prosperity" (*Industrial Democracy*, p. xlvii (1902)).

<sup>2</sup>The Labor Movement in Australasia, 1906, p. 233.

<sup>3</sup>Judge A. P. Backhouse in Report of Royal Commission of Inquiry into the Working of Compulsory Conciliation and Arbitration Laws, Sydney, N. S. W., 1901, p. 15.



wages bill is relatively less heavy. What will be the effect upon arbitration awards when the farmer finds the prices of his goods limited by foreign competition and himself nevertheless compelled to pay increasing prices at home is problematical.<sup>1</sup>

It has been often intimated, as has been pointed out above, that ordinary arbitration precedents have been drawn from extraordinary industrial conditions, such as have existed in Australasia. In the main this is true. There have been numerous instances, however, which afford clue to the applicability of the principles of arbitration to American industrial society. A legitimate basis of comparison may be found in the "certain well-defined principles" governing the wages determination in the dispute in 1911 between the Western Coal Operators' Association and District No. 18 of the United Mine Workers of America:

1. A living wage is a necessity.

2. In mines operating under the same association and within the jurisdiction of the same labor union, uniformity should prevail as far as possible.

3. In the same mining camp equalization of wages should be sought. After passing the limit of the living wage the financial standing of the company should be considered.<sup>2</sup>

One of the serious flaws in the theory of wage arbitration is here in evidence. The fallacy is not an unusual one. It is proposed that there be equalization of pay. In the long run this can be achieved only by means of an equalization of effort. Practice—and there are many instances of this, for example, in recent New England industrial history—has indicated that such a policy involves a process of leveling down of skill. To so dangerous a program even the ardent arbitration enthusiast must hesitate to lend his assent.

The fundamental general principle underlying industrial wage arbitration has been that of the living wage. Grounded in social policy, the living wage, usually in the form of a legal minimum wage, has found its strongest support among the wage-workers.

<sup>1</sup>Complaints of this character have been made in Australia and more recently in New Zealand. Cf. Report of Victoria Commission on Operation of Factories and Shops Law of Victoria, 1903, p. xxvi.

<sup>2</sup>E. g. Report of Arbitration Board in Case of *Grand Trunk Railway v. Its Telegraphers*, 1908.

Primarily interested in social results, the wage-earner finds<sup>1</sup> only minor concern in the immediate or direct economic effects, except in so far as they too alter the broadly social effects. The employers, the entrepreneurs, charged with the responsibility of the right proportioning of factors, of the proper distribution of capital, of the many technical adjustments incident to modern industry, generally have opposed as uneconomic compulsory wage arbitration, especially when the award has taken the form of a fast legal minimum wage.<sup>2</sup> The arbitration precedents established by the Commonwealth Court of Australia have been generally consistent with the fundamental underlying principle. By charging the individual employer with the responsibility of so setting his industrial house in order that he can meet the charge imposed by the general wage award, it has, by policy, encouraged the survival of the industrially fit. "Let him save himself who can; and the devil take the hindmost." Exceptions to the awards have been more customary in New South Wales where the "normal" wage-worker is the standard, and to a less degree in New Zealand. The tendency to grant such relief from the award has been in direct proportion to the acceptance, in practice, of a value theory of wages.

In the individual states of Australia, as distinguished from the commonwealth, the judges have persistently disclaimed any profit-sharing principle for their wage decisions. General consideration

<sup>1</sup> English wage-earners on the whole favor the plan of arbitration. The opposition is mainly that of the strong unions, which expect to win more by direct methods. The points of their criticism are tersely stated:

"Too many conciliations end with a compromise which looks like six of one and a half dozen of the other; . . . Clean-cut, straightforward, cold-blooded business recognition of trade unions is worth volumes of arbitration schemes. . . . We like peace, we want peace, we'll have peace if we are bound to fight for it" (U. S. Bureau of Labor Statistics, Bulletin No. 98 (1912), pp. 184-185).

<sup>2</sup> The opposition of English employers to the scheme of voluntary arbitration as provided mainly in the act of 1896 has been crystallized into three chief particulars: First, the judges, trained in the courts of law to decide cases on their merits and not on grounds of expediency, are apt to bring to arbitration the ironclad principles of the formal law. Second, the arbitrator, because he does not have the responsibility of entrepreneurship, can afford to generously indulge his social sympathies at the expense of the employer. Third, a serious objection is the tendency to "split the differences." The workers put their demands unwarrantedly high. The arbitrator reduces them one half and naïvely congratulates himself upon his ingenuity.

has been given, under the system of wage boards which prevails in many of the states, to changes in cost of living. Custom has featured somewhat in many of the decisions. The immediate guiding principle, however, as distinguished in general from the arbitration precedents reviewed in this paper, where the living wage has been most rigorously enforced and concessions begrudged, has apparently been to "charge what the traffic will bear." This return to value terms is expressed in the following principle underlying an award by Judge Hayden of the Court of New South Wales (by which the principle of the living wage has been the less rigidly enforced), that the men are given what in the Court's opinion they might have secured without a court, considering their own strength and the resisting power of their employers.<sup>1</sup> Stated otherwise, the Court's gauge has been the amount which the Court thinks that the union could have wrenched from the employer had it resorted to the direct methods of the collective bargain or of the strike. But the general complaint of employers in Australasia has been that the fixation of a minimum wage by state arbitration, and especially by the wage boards, has compelled the entrepreneur to lower the wage of the more efficient to compensate for the higher wages of the less efficient. The employers have often naively asserted that this process of general leveling down along with the general leveling up has been necessary, so that the total wage budget might be in the "proper" or "former" relation to profits. The minimum wage has thus tended to become in fact the standard wage.<sup>2</sup>

Finally, it is to be noted that in many states where arbitration practice has been most highly developed the state has challenged the ethical and social justification of existing incomes. It has been unwilling to accept the *status quo* as a necessarily valid starting point. Unadorned economic theory does not always follow through

<sup>1</sup> P. Kennaday in *Yale Review*, Vol. XIX (1910), p. 41.

<sup>2</sup> Professor Hammond has pointed out the important difference between the wage fixed by a wage board and the wage fixed through compulsory arbitration. The former, made compulsory, as a minimum, upon the employer but not upon the employee, is not a standard and still less a minimum wage. The latter, made compulsory alike upon employer and employee, tends to become the standard wage. Accordingly, the essential difference between the wage-board plan and collective bargaining is that in one case the bargaining is compulsory, in the other voluntary.

the labyrinth of social amelioration. Theories of distribution give way to ulterior considerations of immediate social policy. The state of Victoria is definitely committed, for example, to the doctrine that the government shall enforce the right of the workers to a legal living wage. The New Zealand law and the precedents built upon it commit the state to the vastly more comprehensive policy of the redistribution of the income from private industry. The same is true of Western Australia. This program does not appear today as the *inevitable* outcome of a policy of compulsory wage arbitration. It is fair to say, however, that such has been the positive tendency in the great laboratory of modern social legislation, where the judicial methods have become almost universalized in the settlement of industrial disputes. And it seems needless to point out that the precedents of wage arbitration have been in the interests of the human being, the individual worker, rather than in the interests of industry for its own sake. It is not our task here to enter upon a consideration of the validity of such a distinction. The principles underlying wage arbitration have become not an economic theory of distribution but a social theory of *redistribution*.

Among modern social students there has been a wide difference of opinion as to the theoretical merits of arbitration as a device for wage settlement. The persistent division of sentiment has made the subject one of frequent controversy.

Mr. S. N. D. North, in 1896, gave expression to what is perhaps the fundamental fallacy of the theories of wages in industrial arbitration:<sup>1</sup>

The question whether wages ought to follow prices, or prices wages, is one which boards of arbitration cannot determine. . . . We may resolve and protest and insist, but it still remains the fact that the living wage is only possible under conditions which allow the living price. This is the A B C of industrial economics. . . . That is the inexorable law which trade-unionism cannot repeal. If the wage could make the price, it would never fail to do so. . . .

To the many questions propounded in the statement of the problem of the wage theories in arbitration there is found in the precedents no adequate answer. As a method of industrial peace,

<sup>1</sup>Industrial Arbitration: Its Methods and its Limitations," in *Quarterly Journal of Economics*, Vol. X (1896), p. 415.

arbitration is intermediate, not final; corrective, not remedial; opportunist, not ideal; an expedient for which the defense is to be found in present social policy. From the narrowly economic point of view, as contrasted—if such contrast be permissible—with that of general social welfare, wage doctrine in industrial arbitration is as lacking in theoretical justification as is the legal minimum wage, the usual product of arbitration in practice. There is a fundamental circle in the reasoning; throughout, a begging of the question. It takes its place with the other cost-of-production theories of distribution. In judging, however, the usefulness of compulsory arbitration as a device for the maintenance of industrial peace the reminder may not be inappropriate that the “business of the labor arbitrator is not to please orthodox professors of economy, but rather to find a reasonable *modus vivendi* for two disputants who are unable to find it for themselves.”<sup>1</sup>

WILSON COMPTON

DARTMOUTH COLLEGE

<sup>1</sup>W. P. Reeves, *State Experiments in Australia and New Zealand*, Vol. II, p. 169.

## XLII

### MINIMUM WAGES FOR WOMEN<sup>1</sup>

MUCH as has been said of late about minimum wages for women, the questions raised have been dealt with but rarely in the light of economic theory. Economists seem to have been wary of applying to this concrete problem the general reasoning which figures so much in the treatises. A reluctance of the same sort is observable in their treatment of other current questions. What is the influence of immigration on the general rate of wages? What has economics to offer on the controversy between closed shop and open shop? What is the effect of a protective tariff on the rates of wages? The answers to such questions should at the least be made easier by economic theory; indeed, to aid in answering them would seem the ultimate object of theory. Yet the economists have contributed much more to the accumulation of facts, the ascertainment of details, than to the elucidation of the broad, general problems. Perhaps this restraint has been due to a consciousness that we are not sure of our ground. Economic theory is in a process of readjustment; our current formulas must be regarded as provisional; some, at least, among the next generation are likely to see new light in many directions. The egregious errors of which the economists of the first half of the nineteenth century were guilty when they applied offhand the theories of their day impose caution. But there is no more searching way of testing the generalizations of our own time than the attempt to apply them, perhaps to use them as the basis of prophecy. And if in the course of such applications our theories prove bad or useless, the sooner we find it out the better.

In the following pages I shall endeavor to consider the legislative measures for regulating women's wages in the light of some generally accepted economic principles. At the very outset let it be noted that the problem is in essential respects different for women's

<sup>1</sup>From *Quarterly Journal of Economics*, Vol. XXX (1916), pp. 411-422.

wages from what it is for men's wages. About minimum wages for men nothing will here be said. And as regards women, the wages of the lowest group only need be considered at this stage of American discussion and legislation. A wider application of the minimum-wages principle is of course possible—to the establishment of a series of minima, for men and for women, and varying for the several grades of labor. But it is to a single minimum, designed to be effective for the lowest-paid grade of women's labor only, that legislation is directed in the United States; and the present paper will be restricted to this sort of regulation.

The broad facts are sufficiently known. They have been admirably set forth in compact form by Professor C. E. Persons in an article recently published in these columns.<sup>1</sup> Let me summarily recapitulate them. The number of women and girls employed in factories and shops is growing fast. It is growing particularly fast in the occupations classed by the census under the head of "trade and transportation," among which shops hold the first place for women. Both in the factories and shops the great majority of the women are young. Of all the women employed, at least half are between the ages of sixteen and twenty-five; among those who work in factories and shops the proportion of young women is even greater. It follows that they are a shifting class, industrial birds of passage. One set enters the shops and factories and remains there a year or two, at most a few years. Its members marry and are succeeded by a new set. Though there are some older women in the group here under review,—the lowest-paid group,—it is made up chiefly of the young. And from their youth and the temporary nature of their work it follows that in the main they are unskilled or inexperienced; or, if skilled and experienced, only in such tasks as can be easily learned.

Again, the majority of these girls and women live at home. They are ordinarily members of a family group which makes common cause in domestic life. As Professor Persons sums up the outcome of his wide-ranging research: "It boots little to multiply illustrations. . . . The typical female workers are the 80 per cent living at home and contributing the larger part of their earnings to the family treasury. Twenty per cent of the girls at most, are independent workers."

<sup>1</sup>"Women's Work and Wages in the United States," *Quarterly Journal of Economics*, Vol. XXIX (1915), p. 207.

Finally, current wages are low and are usually less than is reckoned necessary for the support of a woman living alone. As a rough generalization it may be said that the wages of the young women who constitute the bulk of those employed in factories and shops range about \$6 a week. Investigations by various commissions lead to the conclusion that the minimum on which a woman dependent on herself can meet "the necessary cost of proper living" (some such phrase appears in the various statutes) is at the least \$8 a week. The usual wages of the great majority of women employed are less than this minimum.

Here is presented the first general question, Are not the industries which employ these women to be deemed "parasitic"? Is it not clear that the women who receive but \$6 a week, and need \$8 for self-support, must have the difference made up somehow? The industries which employ them seem not to pay their way, and the consumers who buy the products do not recoup the full expenses of production. Is not the difference necessarily made up from some other source—by parents, by charities, perhaps by prostitution? This, as is familiar enough, is the ground most frequently urged for fixing minimum wages for women. Such legislation, it is maintained, recognizes an undeniable fact; it puts an end to a clear case of economic parasitism.

This version of the case has been stated so frequently and by such careful thinkers and has been so little questioned—not directly questioned at all, so far as I know—that one must hesitate to take issue with it. And yet it seems more than questionable. It is not clear beyond peradventure that the case is one of parasitic industries; nor must the minimum needed for the support of the independent women necessarily serve as the basis for legislative regulation.

By a "parasitic" industry is meant, I take it, one which necessarily entails some aid and payment from an extraneous source. The typical cases are those of industries employing adults who receive literally less than the bare physical minimum of subsistence. Such cases have been brought to our attention by Mr. Rowntree and others in inquiries on the wages of British laborers of the lowest grade. Similar cases are to be found on the Continent, especially when the handicraft labor of former days is in process of being displaced by machine industry, the handicraftsmen clinging desperately and



hopelessly to the ancient ways. Directly or indirectly the deficiency below the minimum of subsistence has to be made up from some source or other: through public or private charity, through higher taxes or larger doles. The consumer does not pay enough to support the poor creatures, and the general public, since it will not suffer them to starve, must in some way or other make up the difference.

It is not necessary here to consider the question in its larger aspects. The phrase, invented by the Webbs, is in danger of being overworked. The extent of strict parasitism is probably exaggerated. The human frame can endure most wretched conditions; the race can propagate and maintain its numbers on very low terms. Wages that we figure to be below the barest minimum prove not to be so. Reference to parasitic trades occasionally gives an appearance of calculating economy and of cool rationality to proposals which really rest on something better and are to be justified on higher grounds—sympathy with suffering and a will to put an end to it. But this is by the way. Let it be assumed that there are in fact parasitic occupations in the sense indicated. Are the low wages of factory and shop women in this class?

The grounds on which they are supposed to be parasitic have been stated often enough. Those who live alone, away from home or without any home, do not get enough for support if they receive only such wages as the majority get. This "if" is to be noted; for it is quite possible that the independent women, a minority of the whole, are usually in the better-paid positions and are in the main identical with the minority who receive as much as the minimum for independent living. But of this more in another connection. As regards the majority, who live at home, we are told that their case is in no essential different from what it would be if they lived independently. They do not get enough to support themselves. The difference between what they earn and what is needed for their support is made up by other members of the family, usually by their parents.<sup>1</sup>

<sup>1</sup>I quote the following from the Fourth Report of the New York Factory Investigating Commission, 1915. The italics are mine. Professor H. R. Seager says: "These unfortunates are partly supported now *at the expense of others*. Other members of the family contribute something, charity contributes something, prostitution contributes something, and some are slowly losing vitality and such efficiency as they have left because they are constantly overworked and

The figures on which these statements rest are such as to arouse suspicion on their face. The minimum of subsistence is put at some such figure as \$8. This, it is reckoned, the young woman *must* have, even though she lives at home. Now, it seems clear that her mother needs no less; the mother must have as much as the daughter for food, clothing, shelter, incidentals. And the father surely needs quite as much. For the three, then, we have \$24 a week as the minimum of subsistence. If the family consists of more than three, a still larger sum is the minimum. But any such figure is surely untenable, regarded as indicating what is absolutely needed for "decent subsistence." An income of \$24 a week means, for a working-class family, not only ample subsistence but envied comfort. To say that the girl who is a member of such a family must have \$8 a week for bare subsistence is tantamount to saying that the family needs at least \$24 a week; whereas this sum is obviously much above the most liberally calculated minimum. An income of \$15 a week has been set down in recent discussions as the sufficient minimum for the decent support of a family consisting of father, mother, and three children under fourteen.<sup>1</sup> This is a larger

underpaid. The industries that employ them have been characterized accurately as parasitic industries. They do not pay their way, and consumers who get goods cheaper in consequence are living at the expense of the sweated workers or of those who supplement their earnings to save them from the disastrous consequences of earning less than suffices for decent living."

Again, the Massachusetts Wage Commission, in its Report on Recommendations of the Candy Makers' Wage Board, uses the following language (the italics again are mine): "In many instances their actual living expenses are partly supplied by their fathers or other working male members of their families; that is, the self-supporting industries in which the male members of the family are at work are paying the cost of living not only for their own workers but are supplying the deficits in the wages of the female workers in other industries who happen to be in the families of their own employees. Certain industries, employing large numbers of women living at home, are thus in a manner dependent on other industries paying higher wages, and are enabled to keep their pay rolls small because *the actual costs of conducting business are partially paid by other concerns.*"

<sup>1</sup>The family minimum depends, of course, on the make-up of the family; there is artificiality in the figures given for a "normal" family's minimum. Needs vary at different stages. The young workman, just married, gets on comfortably at the wages current. During later years, when children are half grown, there is the most trying stage. Still later, when the children begin to earn something, their earnings serve to ease the situation. A girl of sixteen who has sisters and brothers still younger, and who gets \$6 a week, contributes

sum than is ordinarily got by the unskilled laborer or factory worker. An income of \$600 a year, or \$12 a week, is in fact as much as such a family can count on. But let the higher sum be taken for the purpose of the present simple reasoning. The family may be regarded as the equivalent of at least three adults—the three young children being counted as one adult. This means \$5 per adult. How can it be said, then, that the irreducible minimum for any *one* adult is as much as \$8?

Consider the situation from another point of view. Suppose that into the budget of a family whose head earns \$12 or \$15 a week a girl brings an additional \$6. In a working-class family the difference between \$12 and \$18 a week is great; it is the difference between having hardly any margin at all and something like ease. It means that the family is well above the poverty line. Is the girl who brings in \$6 a parasite? Is she a drag or a prop? Or suppose that the young woman who has been bringing home \$6 a week drops from the family—dies or marries. The specific expenses entailed by her presence cease; her specific contribution to the family income also ceases. Is the family better off or worse? Neither parent would hesitate for a moment from answering that the family had lost, not gained. Can it be maintained that the young woman is a parasite?

The view that any wages for women below the sum usually figured as necessary for sole support—\$8 a week or thereabouts—are “parasitic” seems to me misleading as regards the home dwellers; that is, as regards the overwhelming majority, the dominant constituency. It is possible that even as regards the minority of lone and self-dependent women the current calculations are somewhat more liberal than is consistent with a strict minimum, or with the standards and ways of the class from which most women workers are recruited. Persons habituated to higher standards find it difficult to realize how bare are the absolute needs of those at the bottom; and the reckoning of a minimum of decent subsistence, when made by the more prosperous, may easily bring the total above the sum which the poor in fact find the minimum. But it is not chiefly on this score that the usual figures of minimum subsistence are to be corrected

to the family more than her separate “keep”; and the inducement to push into employment the oldest child of such a family—girl or boy—is overpoweringly strong.

or reinterpreted; this correction—if there be any—might not be serious. The main cause of the obvious discrepancy between the minimum supposed to be applicable to all (home dwellers included) and the smaller sum which in fact these home dwellers and their families find a source of positive aid is to be found in another direction. The calculation ignores the economy of family life. Three or five members of a family can subsist on an income which would not suffice if each were to lodge and feed separately. The family is the one permanently successful case of expense-reducing coöperation. The girl who earns \$6 a week and brings home that sum as a contribution to the family earnings adds to the joint resources more than she adds to the joint expenses.

It is best, therefore, to set aside the explanation of women's wages from "parasitism" and to consider the situation without regard to the implications of this phrase. That situation, as analyzed in the preceding paragraphs, suggests a different and more tenable line of explanation for the meager wages of these girls and women. The circumstance that they live at home contributes immensely to swell the *numbers* offering themselves in the labor market and affects immensely the wages which they get; and it also affects the industrial quality of their work. Here we have what is, from the point of view of economic theory, the crux of the situation.

There is, I suppose, no proposition so universally accepted in economics as that the remuneration of persons in any labor group depends directly on the numbers in that group. It is greater if the numbers are small, less if they are large. We usually try to state the causal connection with more precision by saying that the reward in any group depends on marginal desirability, or marginal serviceability, or marginal productivity. Often we use the general phrase marginal utility, applying the same terminology as in the theory of value at large. Since labor in the last analysis yields simply "services" or "desirabilities" or "gratifications," just as material commodities do, the same principle holds. Often, too, stress is laid on marginal "productivity"; and the working of marginal productivity is said to be the same for labor of any particular kind as it is for labor at large or for the general rate of wages. On this last-mentioned point I am disposed to make reservations. If there is a determination of the general or average rate of wages by the

marginal productivity of labor as compared with that of capital, it is different in its mode of operation from the determination of the wages of a given class of labor by the marginal contribution of the class. But there is no need, for the purposes of the present discussion, to consider whether this method of reasoning admits of sweeping application. It suffices that the influence of an addition to the supply of a particular commodity or a particular kind of labor is agreed to be the same. As the total supply increases, the successive increments become less prized, the price at which they can be disposed of falls, and thus the price of each unit of the supply falls. The business world calls this the operation of "the law of supply and demand," or the determination of the price of a thing by what it is "worth in the market." And it is a part of the same doctrine, of course, that the marginal price is that at which the entire supply can be disposed of. Fix a higher price and all cannot be sold; some units of supply not salable at the higher price will be pressed on the market and will cause the price to fall. The marginal price alone clears the market.

Now the general economic presumption is that when a given price has come to rule in a market, it is the price fixed by the conditions of that market. If the wages of a particular kind of labor are low, as in the case of unskilled men, the explanation presumably is that there are many of them and the marginal desirability of their labor is small. If the wages of unskilled women are even lower, presumably it is because the marginal desirability of their labor is still smaller. Economists have speculated what consequences would ensue if ordinary muscular labor were scarce—if only a select few could handle the pick and the shovel and the plow; how much their labor would be desired and how high would be their wages!<sup>1</sup> And we might similarly make the hypothesis that but few women were in the labor market; then, doubtless, it would appear that there were some tasks for which they were peculiarly fitted and peculiarly desirable, and the wages of the limited number would be comparatively high.

The number of women who offer their services in the market for the particular kind of labor we are here considering is large. Between the time when schooling ceases and the time when marriage ordinarily takes place there is a gap of some years. It may be

<sup>1</sup> I refer to my "Principles of Economics," Vol. II, chap. xlix, sect. 7, p. 170.

disputable whether it is best that the women in this stage should so preponderantly seek work; on this I shall say more presently. But seek it they do. They are not only numerous, they are also inexperienced; they offer unskilled labor; the marginal serviceability of their labor is low, and therefore their wages are low. *Prima facie* the explanation of their low wages is not in parasitism or in oppression, but in a simple economic situation. Whether it is unjust that their wages should be low raises quite a different question; precisely as the question of justice in regard to the going rate for unskilled men's labor is different from that of its economic explanation.

It seems to follow, further, that to set a rate of wages higher than the going market rate will not accomplish the object in view, or at least the main object desired; namely, to bring up to the minimum *all* now employed at the lower rate. At higher wages not so many can find employment. And while the number demanded at these wages will be less, the number seeking employment is likely to be greater. Professor Persons has remarked<sup>1</sup> that a certain number of women who are not now tempted to offer their services in the market will be tempted by the better pay. With less numbers demanded and larger numbers offering, there will be a selection of the more desirable, a rejection of the less desirable, nonemployment for a certain proportion. How large the proportion of unemployed will be must depend on the conformation of the demand schedule; but unemployed there will be, and hence failure to accomplish the desired object. Such seems to be the first and simplest application of economic theory to the case.

There are, however, qualifications and questionings. As in every economic problem, and above all in labor problems, we must try to make our general reasoning complete as well as severe. In two directions qualifications or modifications need to be considered. First, this labor is in demand not by itself, but jointly with other labor; and, second, it is peculiarly weak in bargaining power.

As is the case with almost every sort of labor, the conditions are those of joint demand. Few kinds of labor are demanded by themselves; servants' work and analogous direct service are the most conspicuous examples. Almost every kind of labor given to fashioning

<sup>1</sup> See the article already referred to in the *Quarterly Journal of Economics*, Vol. XXIX, p. 228.

for vending commodities is employed in connection with labor of other kinds. In the factory as well as in the shop the poorly paid women are employed in conjunction with men of all grades of skill and with women of the better-paid grades. Sometimes, as in candy and brush factories, the women of the lower grades form a large part of the labor force; more often they form a small part. It follows that often, indeed, usually, a change in the women's wages makes a relatively small change in the employer's total wages bill and makes an even smaller change in his total expenses. The percentage of increase in total expenses due to a rise in women's wages to a minimum of \$8 or \$8.50 has been figured out for sundry operations. Often it is a small fraction; the employer can easily afford to pay; how can it be maintained that any economic "laws" stand in the way?

I am skeptical, none the less. The same reasoning would apply to any one of the numberless factors that bear on the total expenses of production. No change in any one item is likely to affect at once the selling price of a product; almost any added charge comes at the start out of the employer's profits and does not cause him to diminish the scale of his operations, still less suspend them. The employer is the buffer; it is through him that the impact of the industrial forces is transmitted to the rest of the economic mechanism; the first effect is that he absorbs the shocks. All of which is familiar enough. Yet we may be confident also—though this is less often insisted on—that any change, even a small one, *if it be regularly repeated*, has its influence on calculation and on outcome and comes to have its effect on prices as well as on profits. In all discussion of this kind we must distinguish between long-run and short-run consequences; and it need not be said that those which ensue in the long run are the more important. Now a sustained prescribed increase in the wages of any class of labor acts like a permanent excise or a continued rise in the price of materials. These changes also do not immediately influence prices; they also may form a more or less insignificant fraction in the total expenses of production; they too are absorbed for a while by one or another of the chain of middlemen. Yet no one would pretend that all of them or any one of them can be disregarded because the employer will simply pocket the loss.

Still another consideration leads to skepticism as regards the negligibility of the change. There is a large possibility of substituting other labor for that of the women. As in the case of a commodity, the resort to possible substitutes must be considered, as well as the demand schedule for the commodity by itself. Higher wages for the unskilled women are likely to lead to more or less replacement by men, skilled or unskilled. Like the factor considered in the preceding paragraph, this one exerts its full influence only in the course of time; nor is it possible to say how great the influence will be. It would seem tolerably certain that at sundry points in the line of "marginal" employment the existing equilibrium will be upset and rearrangements made in the combinations of different sorts of labor.

At this point it will be appropriate to consider another turn which the discussion often takes—one which also is supposed to point to the conclusion that the advance of all women's wages to the proposed minimum will be inconsequential, or at least will have no consequences outside the particular industry or industries. It will simply lead, we are told, to greater efficiency. Sometimes it is said that the employers will mend their ways and improve their processes; sometimes that the women themselves will become more efficient. Are there grounds of general reasoning or general experience for expecting results such as these?

The effect of legislative pressure (or other pressure) in inducing employers to adopt more efficient processes has been insisted on in various directions. A conspicuous recent illustration in this country is the contention that railways can meet heavy expenses or make up for low rates by bettering their transportation methods. Protected manufacturers, again, are often told that they can meet more severe foreign competition, resulting from lower tariff duties, by improving their processes or by better management. And so as regards minimum wages, whether for men or for women. Now in all these matters the presumption seems to be against the fulfillment of the optimistic expectations. Improvements in the arts come from the most various sources and in the most various ways. All sorts of possibilities are constantly being pressed on industrial managers. The inducement to secure an increase of profit or a lessening of loss is always keen—as keen, it would seem, as the range of intelligence and enterprise in the managing classes makes possible.



It is not to be denied that improvements are sometimes introduced under conditions of stress. The question is not whether this sometimes happens, but whether it usually and normally happens—whether there is a distinct tendency that heavier burdens will be more easily borne because of the concomitant development of greater strength. The proposition seems to me highly disputable. Perhaps there is a tendency to put into effect in hard times improvements *already known*, but neglected in the days of abundant profits. On the other hand *the* stimulus to invention and progress is the prospect of making money and the sight of others making money. This is the case above all for those improvements in plant and machinery, involving heavy investment, which have been the most effective among the causes of material advancement. The problem is one of wide range; it raises far-reaching questions about the psychology of money-making and of invention; but surely it is the bait of profit rather than the threat of loss which has been the great motive factor in bringing about better plant, new machinery, more effective organization, increase in the productivity of industry.

A somewhat different contention on this score is that the employees themselves will become more efficient because of higher wages—stronger physically, more alert, perhaps more intelligent. Will this really occur? Needless to say, we must bear in mind here also the general situation, not individual cases. If a single factory or shop raises wages above the usual rate, it is likely to get the pick of the labor supply and may find that the higher wages are so much offset by better work that they cause no loss, indeed, prove to be a source of added gains. But *all* factories and shops cannot do this unless *all* employees become more efficient by virtue of getting higher pay. To say as much as this is to hold the steam-engine theory of wages—to maintain that just as more power is got by putting more fuel under the boiler, more labor power is got by putting more wages into human beings. Among theorists the late Francis A. Walker was the first conspicuous proponent of the doctrine, which, since his day, has appeared sporadically in recent economic discussion. This much of truth there seems to be in it: better feeding sometimes causes men and women to be physically more robust; better training causes them to be more intelligent—if the training be really better; better conditions may cause them to be more alert and ambitious. These good

effects *may* come from higher wages. Just how they come and how soon, and under what conditions, and with what certainty, cannot be said with any assurance. There is a complex of causes, a series of interactions, a difference between short-time and long-time effects. Much depends on the elimination of that portion among the workers—perhaps no small portion—who by nature or environment are incapable of responding to uplifting influences. Much depends on the intelligence with which the influences are guided—on the use of food and drink that are really nutritious, on education that is really helpful, on social conditions which in fact arouse alertness. As a general proposition, it would probably be nearest the truth to say that higher wages are ordinarily not the cause of greater effectiveness in industry, but its result; while yet it is true that under favoring conditions higher wages may also be *one* among causes of slowly developing effectiveness. The influence of better pay on efficiency is neither certain nor calculable; still less is it immediate.

In the main we must face the probability that higher minimum wages for all the women affected will lead to readjustments extending beyond the industries themselves. They are not likely to be absorbed in the profits of employers simply because they constitute only one among the expenses of production. Neither are they likely to be offset by an increase in efficiency, certainly not by a corresponding and calculable increase. They seem likely to lead either to lessened profits or to higher prices of goods. Either consequence leads, again, to some curtailment in the scale of operations or some employment of others to take the place of the women. Optimism about its making no difference after all should not blind us to these probabilities.

Turn now to another phase of the discussion. Are not the low wages of the women explicable simply on the ground that they are weak bargainers? Must not theories of marginal serviceability or vendibility be applied with extreme caution to such cases as these? Is there not mere exercise of power on the part of employers, to be counteracted by the exercise of power on the part of the state? In the books on economics we are constantly talking about the handicap placed on the workman by his lack of reserve funds, by his ignorance, by the perishability of labor, by the stress of need. Hence the occasion for labor organizations and labor legislation.

Are not these considerations applicable with special force to the work and wages of women?

Beyond question the group of women receiving low wages are peculiarly weak in bargaining power. They are young, timid, ignorant; they are a shifting class; they are easily browbeaten and bullied. Further, they are hampered as regards mobility. Since they usually live at home, they cannot seek work far from home and are under pressure to accept whatever wages are offered on the spot.

General reasoning does not seem to be of much promise for questions of this sort. Such so-called "exceptions" or "qualifications" in the working of economic "laws" would appear to call for painstaking inquiry on the facts in each particular case, and for that sort of inquiry only. And yet there are some clues of a general character. Low wages due to mere weakness in bargaining may be expected to be accompanied by other phenomena. One of these—perhaps the most significant—is unusual profit by the employer. If his gains—due allowance being made for risk, order of ability required, and so on—are not above the usual or competitive level, *he* cannot be said to take advantage of the employees' inability to bargain; he succumbs to the force of the market conditions. Low wages in that case are concomitant with low prices of the product; they are not a cause of "sweater's" profits. And low prices of the product are then the result of market conditions, of consumers' demand. If goods can be competitively sold only at a low price, the cause is that there are many of them as compared with consumers' estimates of their desirability; and then the explanation of low wages is to be found in that ultimate source already indicated—the marginal serviceability or vendibility of the particular kind of labor, and therefore in the *numbers* offering it in the market.

This sort of reasoning could be used with little hesitation if we had to deal with a simple case. If there were one kind of labor turning out one kind of product; if we found, for example, that women alone were employed in the making of candy; and if we found, further, that the employers took no more than the competitive capitalists' toll on the goods passing through their hands,—then we should not hesitate to say that if low wages are paid to the women they must be due to the low price at which the goods are sold, not to oppressive exercise of bargaining strength by the employers.

The actual cases are, as I have already explained, highly complex. The women are employed in conjunction with all sorts of other workers, and their wages are but one link in the whole chain of expenses of production. In the constant irregularities of prices and profits, in the partition of successive stages of industry between different groups of producers, there is room for bargaining power of which the consequences are not easily traced.

There is not, so far as I know, any body of evidence to show that profits in all or most of the industries which employ a considerable proportion of women are unusually high. It is often enough contended, indeed, that the profits are such that the proposed increase in wages can be afforded or would make little difference. But this is not the same as to say that the existing scale leads in the majority of cases to profits exceptionally high. It is probable that exceptional gains from low wages of women do come under some circumstances; for instance, when an industry first betakes itself to a district where this sort of unskilled labor is abundant. Thus silk mills, in which light machinery almost automatic in operation has been introduced of late years, have moved to the anthracite district of Pennsylvania and have employed with profit the grown and half-grown children of the miners. Candy-makers have similarly planted themselves in the heart of city factory districts. Those who took the first steps in such utilization of labor supplies very likely "exploited" them also—paid low wages and made high profits. Like other changes in the localization of industry, they would feel the leveling influences of competition only after the lapse of a considerable time. Yet transitional conditions of this sort are not the typical ones. Women's low wages are found for long periods in all sorts of places and in all sorts of industries—in cities and in regions where they have been employed for generations, in old industries as well as new. There is no evidence indicating that unusual profits have been reaped thereby over a wide range of industries. So far as this sort of evidence goes there is little to suggest that the low wages have been caused merely by bullying.

There is still another direction in which we may look for evidence of exploitation. If there are particularly low wages in one establishment among others of the same kind, or in a few among a considerable number, there is ground for suspecting that a "fair"

market rate has been depressed by taking advantage of weakness. Cases of this sort were found in the investigations of the Massachusetts Commission on Minimum Wages and in those of the New York Factory Investigating Commission. Variations from region to region (not from establishment to establishment) may constitute evidence of the same sort; here, however, to be used with caution, since local variations of wages are common and are usually due to other causes than mere exercise of bargaining advantage. Standardization and a common rule would seem to be peculiarly called for; and it is somewhat surprising that comparatively little has been made of circumstances of this sort toward strengthening the arguments for legally enforced minimum wages.

On the whole, the general indications do not lead me to believe that the factor here under consideration—weak bargaining power—is the chief one to bring about the low wages of women. No doubt it intensifies the situation. It stands in the way of organization, of mobility, of a holding to the market rate, of response by actual wages to conditions tending to raise the “current” market rate. It causes much to depend on the temper and character of the individual employer, especially as regards matters accessory to the main wages bargain, such as overtime payments, penalties and fines, charges for materials and for breakage. But the great outstanding fact in the situation—the low rate of wages which is found year after year over a wide range of industries in all parts of the country—would seem to be explicable only on other and broader grounds.

The fundamental cause, we are forced to believe, is in the *numbers* of those seeking employment. And these numbers are part of the mass of unskilled workers whose pressure for employment so profoundly influences our industrial and social conditions in every direction. The low wages of factory women are indissolubly associated with the problems of immigration. The constant recruiting of the rank and file of unskilled workers by the inflowing army of immigrants keeps wages in this bottom range peculiarly low in the United States. Though wages are higher than for the same class in the countries whence the immigrants come, they are low relatively to the general American scale of income and prosperity. It has often been remarked that the gap between the wages of skilled and unskilled labor is in the United States greater than elsewhere—

greater than in old countries like England and Germany, greater than in Australia (a new country whose conditions are not unlike our own). Relatively, the American day laborer and factory hand is not so well-paid as the skilled mechanic or the farmer. And the explanation is that the continued immigration of vast numbers has kept the bottom-wages group full and overfull. I will not undertake here to consider whether the average rate for all American laborers of every kind (including farmers) has been lowered or raised in consequence of immigration—whether the total national dividend per worker has become smaller or larger. That difficult question, as I noted at the outset, has been argued by the economists as sparingly as other general questions on which theory might be expected to facilitate the answer. But as regards the wages of the particular class here under discussion—the ordinary unskilled manual workmen—the influence of immigration seems beyond dispute. Everyone knows that throughout the manufacturing and urban districts most of these are immigrants and the rest mainly the children of immigrants, and that the immigrant population sets the wages standards for the entire group. It is their large numbers and the constant recruiting of their numbers that cause wages to be as low as they are.

And it is their daughters who constitute the great army of women workers competing for employment in factories and shops. The wages which the parents get attract them in great numbers to the United States; the wages which the young women get attract them in great numbers to the shops and factories. The multitude which thus bids for employment in the entire field brings about current rates of remuneration which serve on the whole to "clear the market." Rates distinctly higher would cause more applicants to offer their services and would cause less to be employed. The economic theory of the case is simple: the only effective remedy for the low wages of a particular class of workers is a decline in the numbers offering themselves for the particular sort of employment.

When it is said that higher rates of wages would cause less to be employed,—that the demand (that is, the number demanded) would be less at a higher rate than at a lower,—the proposition must be taken in the same sense and with the same qualifications as in the case of a commodity. Much depends on the closeness of the

connection with the consumers. A rise in the price of sugar, for example, has its effect in reducing the quantity demanded with promptness and almost with calculable extent. Similarly, a rise in the wages of domestic servants—an increase, say by legal requirement, of 25 per cent over the rates now current—would lessen the number employed with promptness and, I should suppose, to a considerable extent. A rise in the price of wool, on the other hand, would be transmitted to consumers through the cloth manufacturers and the clothing-makers and the wholesale and retail dealers; the effect would be slow in reaching consumers and might be obscured because of the simultaneous influence of other changes; it would probably be complicated by some resort to substitutes for wool. In the same way, a rise in the wages of women in paper-box factories would also have to reach consumers through the effect first on the box manufacturers and then on the other producers and merchants who are the first purchasers of the boxes, and it too would be complicated by the possible substitution of other workers for women and by that of other wrappings in place of boxes. The essential question is about the slow-working influence of continuing pressure. As regards both the wages of women and the prices of boxes we must consider the consequences not of a sporadic change here and there but of one affecting all enterprises throughout the country. What would happen if legislation should try to apply to the wages of *all* women a minimum of, say, \$8 a week—the sort of standard rate that is commonly proposed?

The answer to this question on general reasoning would seem clearly to be that not all the women would continue to be employed. The numbers offering their services in the market would rise; it is a peculiarly elastic kind of labor supply. On the other hand, the number demanded in industry at the higher rate would be less. The more efficient (or more tractable) would be culled out and first employed. Others, of the common run, would be retained in certain operations for which they were serviceable and profitable even at the higher rate. But there would be a residuum—how large a proportion it is impossible to say, but doubtless considerable—not employed at all.

But here still another question presents itself. Perhaps it is *desirable* that a certain number—conceivably a large number—

should be thrust out of employment. Those so affected would be the less efficient and less serviceable. One of the outstanding aspects of the situation is the large number of young women who work fitfully and sporadically, drifting from job to job. They have no training, no vocational skill, no ambition. They earn something during the busy season and do little or nothing at the slack periods. Their presence and their availability during the busy times tend to accentuate the irregularity of industry. Hence the suggestion that they be deliberately kept out of the working ranks. This could be accomplished by two measures: first, raising the age at which employment shall be permitted, say from sixteen years to eighteen; and, second, forbidding absolutely any employment at less than the "living" wage and thus automatically shutting out those not employable at that rate. To such a policy there would admittedly have to be added something more—provision for the further and better education of this class, not only for higher culture but for industrial and domestic work.

The program is attractive; it cannot but command sympathy. But the difficulties in the way must not be underrated. An effective remodeling of the educational system of a community is a most difficult thing to bring about—not only difficult to plan and provide but difficult to fit into the wishes, the habits, and, not least, the needs of the backward constituency. Such a readjustment as is contemplated means a great extension of secondary education, a complete overhauling of its content, an immense increase in the number of pupils. It means further that the period during which the young women must be supported by their parents is lengthened, and lengthened, too, at the time when the separable expenses of maintaining them have reached the maximum. The economic strain must be great so long as the current wages of men (heads of families) remain at their present level. It would be necessary to reckon with the pressure to reach the stage of earning something, the temptation to evasion, the unpopularity even of well-devised uplift education—not to mention the inadequacy of the traditional ways of secondary schools, so tenaciously clung to by the teaching profession and the school authorities. The road to be traveled is a long one, and for a considerable time the situation must be dealt with as it is, not as we wish that it may come to be in the future.



A further difficult question remains. Assume that the fitful, untrained, indifferent women are got rid of; that all who offer themselves for work at the age of, say, eighteen years have had an industrially helpful education; assume that all the workers in the market are in this sense efficient,—will all of them then be able to get distinctly higher wages than are now current? Perhaps; but not certainly. General economic reasoning would suggest that wages depend not on personal efficiency but on the numbers possessing the efficiency; that is, on *marginal* effectiveness or serviceability. Double the numbers of a group of workers having a given training, and their wages will go down even though their training has been excellent. The net usefulness or effectiveness of any one such worker becomes less. And even if you maintain the numbers of a given group at the same figure, and improve the training and personal efficiency of all, their wages will not necessarily rise. To make effective the new potentialities there must be different organization and different equipment—a response in the managerial situation. The whole problem of the relation between vocational training and individual skill on the one hand and industrial output on the other is a tangled and troublesome one. I will refer here only to one common source of error and of undue optimism—a confusion between the effect of trade training on an individual and its effect on an entire group. Equip a single boy or a few boys for a well-paid trade, and higher wages will be got by these few. Equip a great many boys for such a trade, and the rate of wages in the trade may go down. Computations are sometimes made of the profitableness of trade training. It is figured out that the return in enhanced wages, compared with the expense of education, amounts to a magnificent profit on the investment. But it is forgotten that if a multitude get the training, the wages will be much less enhanced, conceivably not enhanced at all. Equip a small or a moderate number of young women for skilled, responsible, steady work, and they will get higher pay than before. Equip all the young women of the same class and the same age-groups for such work, and they will get pay not so much higher, conceivably not higher at all. The same proposition holds good here as in the cases of new machinery, great inventions, improved organization, scientific management. When confined to a few, and during the earlier stages, all these bring profit to the producers; when of

universal application they redound to the benefit of the community at large, and the producers get their share only as consumers and only to the same extent as other consumers.

In the preceding pages attention has been given chiefly to the case of the women who live at home and are members of a family group—the great majority. What of the minority—one quarter or one fifth of the total—who do not have the advantage of family life and family coöperation, who must make their own budget?

Information about the condition of these self-dependent women is not as full as could be wished. It seems probable, however, that not many of them are in the lowest-paid group. Their wages appear to be usually above the lowest rates and above the average. The women who must make their way alone are in the main identical with the minority who get the better rates of pay and earn enough for independent living.<sup>1</sup> This result is, indeed, to be expected. The stress of need leads to more sustained exertion, more professional exertion, so to speak. In the opinion of well-informed and sympathetic observers there is no good ground for the impression that it is prostitution which serves to eke out the receipts of the single woman. The connection of prostitution with low earnings is undeniable and, indeed, obvious, but the connection runs through the entire stratum of the poor and is not especially noticeable in the case of the women quite dependent on their own exertions. These seem usually to earn enough to get along and are no more likely to sell themselves than other women of similar antecedents and environment.

But, when all is said, the lot of the lone woman is hard. Among them there must be no small number of individuals whose case is pitiable. Their situation, like that of the women who have to support other dependents, brings out sharply and sadly the conflict between the two opposing principles of justice in distribution—the principle of need and that of efficiency. Our system of private property and competitive wages and prices bases earnings on the latter principle: to each according to his contribution. The insistent altruistic sentiment, the feeling of the larger self, rebels recurrently against the rigor of the established rule and would mitigate it or replace it by the

<sup>1</sup>This conclusion—better stated to be an impression—I derive from conversation with social workers, members of commissions, and others close to the situation. Further inquiry on the point is much to be desired.

other: to each according to his needs. So it is as regards the lone woman, the widow who has children to support, the older or younger woman who is the sole prop of a forlorn family. The need is great, even though efficiency be slight.

Unfortunately, a prescription of minimum wages on the basis of "proper" independent support—the elimination of what is called parasitism—would not be specially effective in helping *these* women. They might or might not be among those retained in work, might or might not be among those left unemployed. I cannot but believe that for them we must turn to other measures, both palliative and curative. For the younger women, beyond question, we need helpful education and helpful extension of the period of training. To them, also, charity can be extended, particularly in the provision of decent lodging at prices within their means. Among their problems that of proper housing seems to be quite the most serious—morally, as well as for mere shelter and space. I can see no better opportunity for the sympathetic spirit than in well-devised accommodations for this special class. For the older women, widows' pensions, dependents' pensions, infirmity insurance,—the various forms of wide provision by public authority for unavoidable calamities,—loom up among the desiderata of the future. The feasibility of all such legislation depends on the perfecting of political and administrative machinery—a most urgent task, difficult to achieve, inextricably bound up with all the defects of democracy, deserving the attention and the devotion of the social reformer.

The preceding discussion seems to justify a warning that there is need of going slow in the regulation of women's wages. More particularly there is need of caution in applying as the standard for determining all wages the amount needed by the independent women. The "parasitic" interpretation of the situation is unwarranted. The women workers are not a drain on their families, or on other industries, or on the community at large. It is precisely at this point that the campaign now being carried on in the United States is vulnerable. I cannot but believe that an attempt to apply on a sweeping scale the principle of abolishing "parasitism" must before long break down in practice. The real question is not whether the young women fail to contribute anything to their families or to the national dividend,—they do contribute,—but how their contribution

can be made larger and how they can secure a larger share of the national dividend. The plain facts of the situation must be faced. The immense majority of women who work in factories and like employments do *not* need as a minimum any such wages as the commissions now at work are asked to prescribe. To prohibit their employment except on this basis—to require that every woman at work should receive some such sum as \$8 a week—would not bring about the employment of all at any such rate, but a reduction of the number employed and a failure to attain the desired end.

This by no means leads to a rejection of public regulation or a denial of the usefulness and desirability of wage boards. The considerations adduced in preceding pages do not point to the good old policy of *laissez faire*. It may well be that there is need of regulating and protecting the wages of women and of prescribing minimum rates for those in the lowest group. The conditions of their employment are such as to lead easily to "unfair" wages—wages kept low by taking advantage of timidity, ignorance, lack of mobility, lack of bargaining power. The lack of standardization and the divergent rates of pay under similar conditions point strongly to haphazard influences of this sort. Collective bargaining through organization, difficult enough for the more independent and better-trained women, is almost out of the question for the lowest group. A public commission can act as a regulating and standardization body, striving to eliminate the wage-depressed employee and bringing about the best terms which the social and industrial situation as a whole permits. And such a body, by the very fact of its existence, must be expected to exert its influence for the mitigation of the lot of the poor and weak, and therefore, within the debatable zone, for an upward trend of wages. Its aim must be to press up, not to keep down.

It may be asked what standard a wage board can set up if no absolute minimum is to be applied. The single-woman minimum is calculable and ascertainable—something on which figures can be got and a precise basis for action secured. How fix a minimum for the girls and women whose expenses are to be allocated in a family budget? The task would seem to be as hopeless as that of ascertaining the separate supply price of one among a group of commodities produced at joint cost. The answer must be that the problem is difficult and that no simple rule is at hand for solving it. A

wage commission or board not committed to the standard of separate support would have to proceed by rule of thumb—by standardizing rates of pay not very greatly removed from those found in representative establishments of better grade and watching how the prescribed rates operate from time to time. It would have to proceed cautiously and slowly, even though sympathetically. Virtually this is what every wage board does, whatever the supposed basis of precise action. We make pretenses when we say or imply that there are rigid principles on which to rest such determinations. Even for men minimum wages or minimum expenses of living are in reality shifting and relative things. The supposed fixed amounts vary from place to place and from generation to generation. It is all in the domain of opportunism.

F. W. TAUSSIG

HARVARD UNIVERSITY

## XLIII

### AMERICAN MINIMUM-WAGE LAWS AT WORK<sup>1</sup>

TO THE uninitiated student of American standards of living minimum-wage legislation in this country presents a strange anomaly. On the one hand is the continually announced and apparently accepted dictum that for the woman worker a fair wage must be a living wage; that anything less than that constitutes exploitation and parasitism on the part of the industry engaging her; and that to uphold such a living standard among those whose bargaining power is weak, minimum-wage laws are universally to be enacted and administered. On the other hand is the inescapable fact that of the fifteen states already having minimum-wage laws upon their statute books only three have in operation any rulings of wide application that the scientific student of minimum standards could term at all adequate. Eight have a series of substandard rulings, and the remaining four have none at all.

It will be the task of this paper to set forth some of the reasons for this anomalous state of affairs, to point out the difficulties under which our minimum-wage commissions are laboring, and to suggest certain principles of drafting and administration that might bring our practice into closer conformity with our announced theory.

#### I. CHARACTERISTICS OF THE FIRST MINIMUM-WAGE LEGISLATION, AUSTRALIAN AND BRITISH

The origin of minimum-wage legislation is to be sought not in this country but in England and Australia. Familiar as this fact is, its significance appears to have escaped popular attention. The first rudimentary organs of minimum-wage administration were the District Conciliation Boards of New Zealand, established in 1894 for the compulsory arbitration of labor disputes. Incidental to their

<sup>1</sup> From *American Economic Review*, Vol. IX (1919), pp. 701-738.

general duty of so supervising and directing collective bargaining as to preserve industrial peace, they were given authority to fix minimum wages. The first independent wage-fixing agencies were, however, created two years later in the state of Victoria in Australia. They were called Special Boards and were at first established experimentally for certain notoriously sweated trades that employed both men and women. These boards were composed of an equal number of employers and employees, with a chairman from outside nominated by both parties. They were given no explicit criterion to go upon in framing their wage awards, but were apparently expected to argue out their difficulties in true collective-bargaining style, under the supervision of the disinterested outsider, their chairman, who was to represent the public interest.

So successful was this system that it was extended to more and more trades, was adopted by other Australian states, and finally, in 1909, by England. The essence of the system is the free discussion of wage standards by the authorized representatives of both sides, with the aid and criticism of one or more impartial outsiders; the fixing, by this responsible bipartisan group, of standards that are thereupon compulsory upon all employers in the industry; and the reservation by the government of power to suspend or otherwise mitigate rulings that appear positively unfair or inexpedient. *No definite cost-of-living criterion is set up.* The level of the standards finally fixed will rather depend upon the general temper of the community in which the law is operative and upon the respective bargaining power of the two sides. Thus, in Australia, a young and rather radical country, with labor relatively scarce and powerfully organized, the tendency has been for the wages fixed to equal or even exceed the minimum necessary for livelihood; while in England, with its cautious public and overstocked labor market, the tendency, especially in the first years of the law's administration, has been in the opposite direction: the wages fixed, although well in advance of previous rates for the trades concerned, have been as a rule avowedly below the subsistence minimum.

Certain safeguards in the English law itself (Trade Board acts of 1909) have accentuated this difference. In the first place, the provisions of the act could only be extended to other trades than the four originally specified, "if they [that is, the Board of Trade, the

general supervisory body that establishes the separate trade board] are satisfied that the rate of wages prevailing in . . . the trade is *exceptionally low*, as compared with that in other employments, and that the *other circumstances of the trade* are such as to render the application of the Act . . . *expedient*."<sup>1</sup> In other words, boards could not be established unless conditions in the trade were worse even than in neighboring trades, and then only if the financial state of the business was sufficiently healthy. Yet in England, prior to the war, wages in all the great woman-employing industries were notoriously low, while the industries that were submerged even beneath this level were extremely apt to be in a declining condition financially. This clause in the law is therefore very interesting as showing that business considerations were explicitly given priority over humanitarian.

In the Victorian statute, on the other hand, these two sets of considerations were, in the last resort, apparently to be considered as parallel and noninterfering—an interesting comment upon the general level of wages apparently contemplated by the Victorian draftsmen. The Court of Industrial Appeals (the final reference tribunal for the separate boards) is to consider, in its review of any ruling, "whether the determination appealed against *has had or may have the effect of prejudicing the progress, maintenance of, or scope of employment in the trade . . . affected*; and . . . [if so] . . . the court shall make such alterations as in its opinion may be necessary to remove or prevent such effect *and at the same time to secure a living wage to the employees*."<sup>2</sup>

Another new safeguard introduced in the English law was the prolongation of the period of initial delay before any ruling could go into effect, together with elaborate provisions for indefinite suspension by the Board of Trade afterwards in case the ruling appeared to them "premature or otherwise undesirable."<sup>3</sup>

So much for the negative features of the English law. On the positive side we find a centralization of supervisory power in one

<sup>1</sup> British Trade Boards Act, 1909, Section 1, (2) (italics mine). This statute and almost all the succeeding ones quoted in this article may be found in "Oregon Minimum Wage Brief," by Felix Frankfurter and Josephine Goldmark, pp. 1-76. The individual notation of the American laws has therefore been omitted.

<sup>2</sup> Factories and Shops Act, 1912, Section 175 (italics mine).

<sup>3</sup> British Trade Boards Act, Section 5, (2).



permanent government body, the Board of Trade, and the giving of great flexibility to the possible scope of the wage rulings themselves: "Those rates may be fixed so as to apply universally to the trade, or so as to apply to any process . . . or to any special class of workers . . . or to any special area."<sup>1</sup>

Both England and Australia make special provision, by individual permit, for infirm workers to receive less than the established minimum.

## II. GROWTH OF AMERICAN LEGISLATION: THE MASSACHUSETTS AND OREGON PRINCIPLES CONTRASTED

Such was the status of minimum-wage legislation when it was first seriously considered by this country in 1911. In that year the Massachusetts legislature passed a resolve requesting the governor to appoint an investigating commission "to study the matter of wages of women and minors, and to report on the advisability of establishing . . . [wage] boards. . . ."<sup>2</sup> This Commission on Minimum-Wage Boards submitted an excellent report together with the draft of a bill which, with certain important modifications, was thereupon enacted into law.

In its original form this Massachusetts bill followed the British and Australian system as closely as American constitutional limitations permitted; but these limitations were of the greatest importance.

1. The American law could apply only to women and minors, since if it were extended to men it would most certainly be held by the courts to run counter to the "freedom of contract" clause of the Fourteenth Amendment.

2. The American law must beware of delegating legislative functions to an administrative agency. It must therefore clearly define (a) the conditions under which an industry should fall within the scope of the wage commission at all; (b) the criteria upon which wage awards were to be rendered; (c) the exact relation of board to commission. Since the commission was the permanent supervisory body, the only safe course was, obviously, to centralize all ultimate responsibility in its hands.

The essential features of the Massachusetts bill were accordingly as follows: (1) It provided for a permanent appointive commission,

<sup>1</sup> British Trade Boards Act, Section 4, (1).    <sup>2</sup> Resolves of 1911, chap. 71.

with power (a) "to inquire into the wages paid to the female employees in *any* occupation in the Commonwealth if the commission has reason to believe that the wages paid to a substantial number of such employees are *inadequate to supply the necessary cost of living and to maintain the worker in health*";<sup>1</sup> (b) thereupon to "establish a wage board consisting of *not less than six* representatives of employers in the occupation in question, of an equal number of representatives of the female employees, . . . and of *one or more* disinterested persons . . . to represent the public . . .";<sup>2</sup> and (c) upon the receipt of a report from the board to "approve any or all of the determinations recommended . . . or [to] recommit the subject to the same or to a new wage board."<sup>3</sup> Once approved, the rates were to be rendered obligatory, after due notice and public hearing, by a formal order of the commission effective in sixty days. Violation of the order constituted a misdemeanor punishable by fine and imprisonment. (2) The basis of wage determination by the boards was made explicitly the double one of cost of living plus financial condition of the business, with the business considerations evidently taking the priority:

Each Wage Board shall take into consideration the *needs of the employees*, the financial condition of the occupation and the probable effect thereon of any increase in the minimum wage paid, and shall endeavor to determine the minimum wage . . . suitable for a female of ordinary ability. . . ."<sup>4</sup>

Apparently it was presupposed that the "suitable" wage finally reached would commonly be below the actual cost of subsistence. Such a view is borne out by the cautious words of the investigating commission's report: "It is the opinion of this Commission . . . that in all these industries the wage scale *will stand* a readjustment of rates that will raise the lowest wages to *something nearer* the living wage. . . ."<sup>5</sup>

<sup>1</sup> Section 3 (*italics mine*).

<sup>2</sup> Section 4 (*italics mine*).

<sup>3</sup> Section 6.

<sup>4</sup> Section 5 (*italics mine*). It was hoped that the weight given the employer's interests would avoid collision with the "due process" clause of the Fourteenth Amendment.

<sup>5</sup> Report of Massachusetts Commission on Minimum-Wage Boards, p. 24 (*italics mine*).

Even so careful a statute was, however, unable to run the gantlet of the Massachusetts legislature. Before its final passage the bill was shorn of its most vital portion, the section on enforcement. The "orders" of the commission were changed to mere "recommendations," and the penalty of fine and imprisonment to mere adverse publicity. The recalcitrant employer in Massachusetts is now faced with nothing worse than the publication of his name in certain newspapers; and even this penalty he can avoid if he can prove before a court that "compliance with the recommendations of the Commission would render it impossible for him to conduct his business *at a reasonable profit*."<sup>1</sup> Profits, in other words, are avowedly made a "first charge" upon the business.

The weaknesses of this earliest of American minimum-wage laws may accordingly be summed up as follows, under the three heads of principle of wage determination, character of wage-fixing agency, and method of enforcement.

1. *Principle of wage determination.* Women (normal, experienced, adult women) shall receive wages just high enough to keep them alive and physically well, *provided* their doing so does not threaten to interfere either with the general financial prosperity of the trade or with the "reasonable profits" of an individual employer.

2. The *agency* for the immediate carrying out of these principles is a large mixed board of employers and employees, with in no case more than one fifth of the total membership representing the disinterested public.

3. The sole *means of enforcement* is in the indirect pressure of public opinion. Boards and commission, therefore, know beforehand that any ruling that threatens to prove burdensome to the individual employer can safely be disobeyed, that anything approaching drastic action will tend to defeat its own ends.

In view of all these limitations it is surprising to find how much has been accomplished in Massachusetts. The mere focusing of attention upon the problem of wages and livelihood appears to have sufficed materially to raise the wages in many submerged trades. The usual process is for the board to thresh out what they agreed to be a

<sup>1</sup> Section 6 (*italics mine*). As a matter of fact, the Commission has not found it worth while to publish such a black list; instead it occasionally publishes white lists of such employers as do comply!

minimum-subsistence budget and then to see how close they think they can come to that without infringing upon the "financial condition of the business" or (what amounts to the same thing) without incurring wholesale violation of their decree. Usually the wage finally agreed upon lags about a dollar behind the original budget;<sup>1</sup> while this in turn has usually omitted or cut down below the subsistence level a good many necessary items; even so, the minimum is usually a distinct advance over previous rates. Thus in the brush industry, the first to be investigated, the original budget came to \$8.71; the legal "suitable" rate was established at 15½ cents an hour, which allowed the average worker to earn about \$7,<sup>2</sup> but previous average earnings had been below \$6. The percentage of violations at the end of the first year was gratifyingly low, and has been reported to be decreasing since.<sup>3</sup>

<sup>1</sup> MASSACHUSETTS BUDGETS AND WAGE DECREES TO JULY 1, 1919\*

BOARD	BUDGET TOTAL	DATE OF BUDGET	DECREE	DATE WHEN EFFECTIVE
Brush . . . . .	\$8.71	Jan., 1914	15½ c. hr.	Aug. 15, 1914
Candy . . . . .	8.75	Summer, 1914	(no decree)	
Laundry . . . . .	8.77	Winter, 1915	\$8.00	Sept. 1, 1915
Retail stores . . .	(no exact budget)		8.50	Jan. 1, 1916
Women's clothing .	8.98	Spring, 1916	8.75	Feb. 1, 1917
Men's clothing . .	10.00	Spring, 1917	9.00	Jan. 1, 1918
Men's furnishings .	10.45	Summer, 1917	9.00	Feb. 1, 1918
Muslin underwear .	9.65	Winter, 1918	9.00	Aug. 1, 1918
Retail millinery . .	11.64	Spring, 1918	10.00	Aug. 1, 1918
Office cleaners . .	11.54	Spring, 1918	30 c. hr. night work 26 c. hr. day work	Mar. 1, 1919
Wholesale millinery	12.50	Fall, 1918	11.00	Jan. 1, 1919
Candy . . . . .	12.50	June 5, 1919	12.50	Jan. 1, 1920
Canning . . . . .	11.00	June 24, 1919	11.00	Sept. 1, 1919

\*From Sixth Annual Report of Massachusetts Minimum-Wage Commission, Appendixes 3 and 4; and Monthly Labor Review, April and August, 1919.

<sup>2</sup> This rate was based on the supposition of a fifty-four-hour week, which would here have given the worker \$8.37. However, the industry was notorious for its prevalence of short-time work.

<sup>3</sup> It has averaged only about 1 per cent of the employees covered. (Report of the Minimum-Wage Commission, 1915 and 1917, pp. 14-15 and 32.) However,

The example of Massachusetts so encouraged progressive groups in various parts of the Union that in the following year eight other states passed minimum-wage laws. Of these by far the most important is Oregon's. It has served as a model for the bulk of our subsequent legislation, and may fairly be contrasted with the original Massachusetts statute as showing the growing definiteness and articulateness of the living-wage idea.

The Oregon law provides for a central administrative commission and subsidiary boards appointed by it after the Massachusetts fashion, working through the orthodox machinery of public hearings and private investigations and conferences; but this machinery is to be used for strictly living-wage ends. Section 1 reads:

*It shall be unlawful to employ women in any occupation . . . for wages which are inadequate to supply the necessary cost of living and to maintain them in health; and it shall be unlawful to employ minors . . . for unreasonably low wages.<sup>1</sup>*

Boards and commissions alike are given no other criterion of wage fixing than this simple and explicit one of the "necessary cost of living." No mention is made anywhere of suitability, expediency, or the financial condition of the industry; instead, in every paragraph the cost-of-living basis is repeated in identical words.

Once the recommendations of a board have been approved by the commission, they are issued as obligatory orders, binding within sixty days upon every employer in the industry, regardless of his difficulties in meeting them; disobedience is punishable by heavy fine and imprisonment. Moreover, the personnel of the subsidiary boards (here called conferences) is so arranged that impartial decisions are more easily rendered: the whole board is smaller, the representatives of the public have a larger share of the membership, and every board has at least one member of the central commission

other determinations of the Commission have not been so well received. Thus the great majority of laundry employers refused, illegally but successfully (1915-1917), even to allow the Commission to examine their pay rolls to see what their degree of compliance was (1915 Report, p. 15; 1917 Report, p. 35); while within the women's clothing industry the Commission reports (1917 Report, p. 36), "Complete compliance was found . . . in only about half of the custom dressmaking establishments."

<sup>1</sup> Italics mine.

sitting officially on it.<sup>1</sup> In all these ways the double-standard, collective-bargaining idea—the official balancing of opposing interests—would seem to have given way before that of the living wage pure and simple.

It may well be asked, What could have caused so radical a change in legal principle in one short year? The answer is probably two-fold. On the one hand, Oregon is a Western state, with more radical views in regard to industry, a relatively small number of women employees, and a radical method of legislation (the minimum wage was an initiative measure). On the other hand, Oregon had the advantage of being the second state to pass such a law: she already had the solid precedent of Massachusetts to go upon; and, since American constitutionalism required the wage-fixing basis to be quite definite in any case, it became relatively easy for the Oregon advocates to insist upon sloughing off the "double-faced" and apparently mercenary elements of the older law.

Of the thirteen statutes that have followed Massachusetts and Oregon nine may be said roughly to have copied the Oregon model, one the Massachusetts model, while three have to be put into a separate category as flat-rate laws.<sup>2</sup>

### III. FLAT-RATE LAWS

The flat-rate laws differ from both the earlier models in that they operate not through commissions but through direct fiat of the

<sup>1</sup>"Such conference shall be composed of not more than three representatives of the employers in said occupation, of an equal number of . . . employees . . . and of not more than three disinterested persons representing the public and of one or more commissioners" (Section 8).

<sup>2</sup>Chronologically the laws run as follows:

1912—Massachusetts.

1913—California, Colorado (on the Massachusetts model, now obsolete), Minnesota, Nebraska (repealed 1919), Oregon, Utah, Washington, Wisconsin.

1915—Arkansas, Kansas.

1917—Arizona, Colorado (new law, on the Oregon model).

1918—District of Columbia.

1919—North Dakota, Texas; also Porto Rico.

The gap in legislation that occurred during 1915-1917 was due to long-drawn litigation in the Oregon case. The law was finally upheld by a divided opinion of the Supreme Court—Justice Brandeis, as previous counsel for the defense, not voting.

statute itself. The different rates for experienced adults, learners, and minors are set once and for all in the body of the law and apply uniformly throughout the state to all industries specified. The advantages of flat-rate legislation are that it (1) avoids the constitutional difficulty of delegation of powers and (2) is extremely simple and cheap to administer. Its overwhelming disadvantage is of course its lack of flexibility.

The simplest and most inflexible of our flat-rate laws is that of Arizona (1917). It covers all manufacturing, mercantile, hotel, restaurant, and office occupations and sets for them one simple state-wide minimum of \$10 for all females, of whatever age or experience.

Somewhat more discriminating is the Utah statute of 1913. It applies to all females in all lines of industry, but sets lower rates for minors and learners than for experienced adults. The adult rate is \$7.50 per fifty-four-hour week. These rates were set in 1913 at the passage of the original act and have never been changed since. This is not surprising, since it would take a statutory amendment to do so.

The Arkansas law (1915) at first glance looks like a genuine hybrid between the flat-rate and the commission principle. It sets the same series of state-wide rates as Utah, culminating in the same \$7.50 for experienced women, but it establishes at the same time a minimum-wage commission of the usual type, under the chairmanship of the Commissioner of Labor, to revise the rate by localities or trades whenever it may appear either too high or too low. On the face of it this would seem a good compromise, combining the advantages of a universal basic rate with those of periodic local adjustment. In practice, however, the periodic adjustment has never taken place; the commission feature of the law has remained entirely unutilized. In consequence, when, in August, 1918, the National War Labor Board was called in to consider the case of the laundry industry in Little Rock,<sup>1</sup> it found the operatives still receiving their 1915 minimum of \$7.50 per fifty-four-hour week, and promptly raised the scale some 40 per cent, to \$11—an interesting example of the war-time supersession of state by federal agencies.<sup>2</sup>

<sup>1</sup>National War Labor Board, Docket No. 233.

<sup>2</sup>A thorough-going flat-rate law has been established for Porto Rico in 1919. It provides a weekly minimum of \$6 for experienced women over sixteen, \$4 for learners.

## IV. COMMISSION LAW ON THE MASSACHUSETTS MODEL

Nebraska's is the only statute that at the beginning of 1919 still directly followed Massachusetts in its two characteristic features. It had copied verbatim the earlier law's explicit consideration of the "financial condition of the industry" and had adopted in mitigated form its noncompulsory provisions.<sup>1</sup> However, although passed in 1913, this law had never gone into operation,<sup>2</sup> and in the 1919 session of the legislature it was repealed. Now that the constitutionality of the more radical type has been upheld in the Oregon case, there seems little likelihood that any other state will recur to the older model.

## V. COMMISSION LAWS ON THE OREGON MODEL

Of the nine laws that, following Oregon, have both enforceable decrees and an unequivocal cost-of-living basis, three have been rendered inoperative for longer or shorter periods of time by litigation connected with the Oregon case, while a fourth has as yet been inactive (according to the Commission) because of war conditions.

<sup>1</sup> It provided no other penalty save newspaper publicity. However, the publicity was at least made mandatory, not optional with the Commission, and the employer seeking exemption from it would have had to prove to the court that compliance would endanger not merely his profits but "the prosperity of the business."

The Nebraska law also copied Massachusetts in a less important objectionable feature, namely, the requirement of a two-thirds majority for all decisions of wage boards. In Massachusetts this has operated as a direct incentive to obstinacy on the part of the employers, since employees and public, even though combined unanimously, could never outvote them. (See, e.g., the account of the disagreement of the Office Cleaner's Board, 1918, in the *Monthly Labor Review*, April, 1919, p. 187.) In Nebraska the provision would, however, have been mitigated in practice by the companion provision that each board must have on its membership as representatives of the public the entire body of commissioners (four).

<sup>2</sup> In explanation of their failure to put any minimum wage into operation, the Nebraska Commission stated that no complaints were made: "Since the adoption of the law in 1913, no complaint has been filed with the Commission, and therefore no meeting of the Commission has ever been held. . . . There had been more or less agitation before this Commission was created in 1913, and during the session of legislatures since, but there seem to have been no reports of any kind made" (letter to the Secretary of the American Association for Labor Legislation, July 22, 1918).



The new Colorado Commission (1917) states that, owing to the war, . . . "there was no cause for complaint from the classes affected by the Act, and consequently this Commission has had very little . . . to do thereunder."<sup>1</sup> As a matter of fact, however, this inactivity may well have been due, at least in part, to a more absorbing interest in matters outside the minimum wage. The Commission here is a general State Industrial Commission, with many duties.

The Wisconsin law (1913) also gave the wage-fixing power into the hands of its general Industrial Commission. "During 1914-1917," writes their secretary, "this Commission believed that little could be gained by establishing a minimum-wage scale which would immediately be tied up by an injunction," while for some time thereafter they were hampered by lack of funds.<sup>2</sup> However, now (since August 1, 1919) they have established a state-wide minimum for experienced women and minors over seventeen, in all occupations, of 22 cents per hour (or \$12.10 per fifty-five-hour week).

The Kansas law gives the power of fixing wages into the hands neither of a minimum-wage commission pure and simple nor of a general industrial commission, but of a so-called Industrial Welfare Commission created for the purpose of setting standard hours and conditions of work as well as wages. In this respect it follows Oregon<sup>3</sup> and the other two coast states yet to be cited.<sup>4</sup>

Established as it was in 1915 after the beginning of the Oregon litigation, the Kansas Commission has only been operative since March, 1918. The Minnesota Commission, established two years earlier, had the advantage of a year's enforcement of its rulings before the opening of the Oregon case, and revived those rulings later in 1918. Both commissions had evidently suffered from the cooling-off process incident to so long a delay; they declared themselves unable to adjust the recently legitimized rates to present prices.

"Our first minimum wage went into effect on March 18 of this year (1918)," writes a representative of the Kansas Commission.<sup>5</sup>

<sup>1</sup> Second Report, Colorado Industrial Commission, pp. 127-128.

<sup>2</sup> Letter to the writer, December 12, 1918.

<sup>3</sup> It did not seem necessary while dealing with the Oregon law to point out this additional administrative distinction, since it in no way affects the essential nature of the wage award.

<sup>4</sup> The Washington Commission does not have power to fix hours, only wages and working conditions.

<sup>5</sup> Letter to the writer, October 31, 1918.

"We consider that . . . [it] is very low. [Their rate for experienced women in stores and laundries is only \$8.50, although for factories it has more recently been raised to \$11.] However, it was as much as the employers on our Board would concede." A representative of the Minnesota Commission adds:<sup>1</sup>

The Commission was reappointed on April 1st of this year (1918) [the Minnesota law had finally been declared constitutional three weeks before], and it decided to enforce the wage orders already issued . . . based on the cost of living in normal times in order that the law might go into effect at once. [These rates provided a maximum of \$9 for experienced workers in first-class cities.] If wage rates were to be altered the Commission would have had to make an exhaustive study into the cost of living covering the entire state *because our Attorney General has ruled that wage rates must be state-wide in their effect when established.* This would have meant *a delay of at least six months* in the enforcement of the law.<sup>2</sup>

Two other commission laws, those of Texas and North Dakota, have been enacted only this year (1919), so that no rulings have as yet been issued under them. The Texas law provides for an Industrial Welfare Commission, headed by the Chief of the Bureau of Labor Statistics, while the North Dakota law, in unique fashion, gives the power of fixing wages, hours, and working conditions into the hands of its state Workmen's Compensation Bureau.

The four remaining commission statutes of a compulsory character have all been enforced from the beginning<sup>3</sup> and have resulted in the four highest sets of rates yet attempted. They belong to the three Pacific coast states (1913) and the District of Columbia (1918). The Pacific states have industrial-welfare commissions, while the District of Columbia has a regular minimum-wage commission. The language and substantive features of all four are, however, practically identical, the Oregon law having served as a model for the rest.

<sup>1</sup> Letter to the writer, November 9, 1918 (italics mine).

<sup>2</sup> The rates have since been scaled up (August, 1919). Experienced workers in first-class cities now receive \$11 per week of forty-eight hours or less.

<sup>3</sup> Strictly speaking, the California law did not really get under way until after the Oregon decision. During 1914-1915 the Commission confined itself to a thorough investigation of wages and cost of living, and in 1916 issued but one order, that on canneries. As soon as the Oregon decision was rendered, however, in April, 1917, the Commission sprang into full activity.

All four sets of rulings are now based on a forty-eight-hour week. For this, Oregon and Washington fix \$13.20 as the minimum wage; California, \$13.50; and the District of Columbia, for the two trades with which it has so far dealt—printing and publishing and mercantile—no less than \$15.50 and \$16.50. All these rates have been either newly set or revised within the past year. (Washington's minimum dates only to November, 1919, while Oregon's became effective October 14, 1918.) The three Pacific coast rates, like that of Wisconsin, are most noteworthy in that, for the first time, they apply uniformly to all trades covered by the law.

Two sets of factors aside from the drafting of the laws themselves may have contributed to make these four recent sets of rates so high: in the Pacific coast states a greater readiness to "give women a chance," coupled with a lesser degree of overcrowding in the female-labor market; in the District of Columbia, the immediate proximity of the United States Bureau of Labor Statistics, with its wealth of scientific material *plus personal explanation* at the immediate service of boards and commission. However, what is perhaps still more important, all these states have had close contact between commission and local wage board. In California the executive officer of the commission acted as chairman of the recent boards, while in the record-breaking District of Columbia decision, all three members of the commission have actually thus participated.

## VI. DEFINITIONS OF THE LIVING WAGE

The variation in wording of the living-wage definitions in all the various statutes we have seen passing in review does not, so far at least, seem to have had any direct effect upon the character of the decisions rendered. They run all the way from Kansas's "adequate for maintenance" and "to supply the necessary cost of living" to Minnesota's "sufficient to maintain the worker in health and supply . . . [her] with the necessary comforts and conditions of reasonable life" and Wisconsin's "sufficient . . . [for] . . . welfare"—"welfare" being further defined as "reasonable comfort, reasonable physical well-being, decency, and moral well-being." Almost all the statutes, following the Oregon and Massachusetts precedent, refer to health ("to maintain in good health"), and many add a reference to moral protection or to general welfare or both.

## VII. THE RÔLE OF THE ADVISORY BOARDS

Another variation in the wording of the statutes, that does not seem so far to have had any marked effect upon their operation, is the variation in the rôle assigned the subsidiary wage boards. In some states their appointment is mandatory, in others optional with the central commission.<sup>1</sup> In practice, however, with one exception (Minnesota), all the commissions that are actually operative have chosen to do their work through boards.<sup>2</sup>

This may seem rather surprising, since the presence of the boards necessarily complicates and delays every decision. It means a larger, more partisan, and less well-informed group of people discussing each issue. However, it also means a group that is closer to the public confidence. The board members are themselves direct representatives of employers and employees, and in educating each other in methods of straight thinking on the wage problem they are at the same time helping to gain that general good will without which so new and tentative a type of rulings could not finally succeed.

Moreover, as a purely practical question of time, the overburdened volunteer<sup>3</sup> commissioner in a large industrial state could not afford to go exhaustively into the technical problems of each trade and then sit through a long series of hearings on each. The local-board members<sup>4</sup> can divide up this responsibility and pool their information at the end.

Granted, then, that it has proved desirable to retain the services of the advisory boards, the second question arises, What is (or should be) the limitation of their power as over against that of the commission? Once their advice is sought, may it be disregarded?

<sup>1</sup>The new (1919) Texas law alone makes no provision for the calling of such boards.

<sup>2</sup>The states in which the appointment of boards is mandatory are Massachusetts, Kansas, Nebraska, and Wisconsin.

<sup>3</sup>In most states the members of the commission are wholly unpaid. In Massachusetts and California alone do they receive a \$10 *per diem*. Wisconsin, Colorado, and Utah have general industrial commissions with salaried officers, but their minimum-wage work is incidental.

<sup>4</sup>Board members are ordinarily paid a very small *per diem*, usually the same rate as jurors, though in some states they receive nothing at all. Only California pays as much as \$5. Even these small amounts, however, form a serious drain upon the all too scanty funds of the commissions.

Here interpretations differ. All the states allow the commission to reject a report and resubmit the subject to the same or a new board;<sup>1</sup> but the real question is, May they themselves alter the recommendations without resubmittal?

Certain statutes, such as those of Oregon, Washington, and Kansas, have been interpreted unequivocally to forbid this, and the commissions chafe under the strain. A representative from Kansas writes: "We believe that the Boards are very, very helpful indeed, but—that after the public hearing the Commission should be able to make such modifications as it thinks necessary and issue the ruling then as final."<sup>2</sup> On the other hand, certain other statutes, notably that of California,<sup>3</sup> plainly leave the alternative of commission action open.

In California, consequently, the Commission has taken very useful advantage of its privilege: thus, when the mercantile and laundry boards of 1917 failed to come to an agreement, the Commission merely made note of the two conflicting sets of budgets and proceeded to establish a final rate of its own.<sup>4</sup> Surely this is preferable to the Kansas and Massachusetts system.

### VIII. THE COMPOSITION OF THE ADVISORY BOARDS

In dealing with Massachusetts and Oregon we have already referred to the effect of variations in the size and personnel of advisory bodies. Obviously, the larger the board, the greater will be its tendency towards debate rather than scientific analysis. Similarly, the larger the number of partisans as compared to the number of representatives of the public, the less likely is the scientific view to get a hearing. And, finally, the wider the separation of the board from the sources of information accessible to the permanent commission, the less likely is the scientific view even to be understood. The most

<sup>1</sup>And all but Minnesota allow them thus to resubmit any part of the subject.

<sup>2</sup>Letter to the writer, October 31, 1918.

<sup>3</sup>The California statute reads: "... the recommendation of such wage board shall be made *a matter of record for the use of the Commission*" . . . ; and then: "*The Commission shall have further power after a public hearing had upon its own motion or upon petition to fix . . . a minimum wage to be paid to women and minors . . .*" (Sections 5 and 6; italics mine).

<sup>4</sup>See Third Biennial Report I. W. C. of California, pp. 24 ff. In both cases this final rate approximated that of the employees.

efficient board is therefore unquestionably one in which the total membership is small, the public being represented equally with the other two sides, and on which, in addition, at least one member of the central commission sits permanently.

This last requirement is fulfilled in Oregon, Washington, California, and the District of Columbia, the four states as pointed out above whose boards have so far promulgated the highest rates. In Massachusetts the practice of the Commission has been to appoint as one representative of the public the permanent paid secretary of the Commission, who is known as "the executive officer of the board," and appears to be invested with a good deal more dignity than he has in most states. This may help to account for the relatively good rulings that the Massachusetts boards have issued. Certainly they appear to have been better informed than many of our statutorily more fortunate bodies. In the nature of the case the secretary of a commission is an excellent person to represent the scientific point of view to the other members of an advisory board. He is the one salaried expert who gives his full time to the work of the commission, and should of necessity be more familiar than anyone else with all its sources of information. His effectiveness is, of course, further enhanced when he holds full voting membership in both bodies. This has been the fortunate practice of California, where the "woman's representative" on the Commission, who acts also as its "executive officer," serves as chairman of each wage board. However, California has the weakness of providing for no other representatives of the public.

#### IX. PRACTICAL DIFFICULTIES IN WAGE-SETTING : THE PROBLEM OF AN ADEQUATE ORIGINAL WAGE

When it comes actually to fixing a "living wage," American boards are confronted with a whole series of difficulties. In the first place, whatever may be said in the language of the statute itself, every board member knows that in practice the representatives of the employers and all who sympathize with them are bound to take the condition of the industry itself into consideration. What else, indeed, are they there for? If the object of the law were merely to establish an abstractly scientific standard of living for each employee, regardless of its reaction upon conditions of employment and trade in general,

why work through representative boards at all? Why not merely have a central executive commission or, better still, a single paid expert whose duty it would be to adjust well-established family standards (such as those issued by the United States Bureau of Labor Statistics) to local conditions and the needs of the single woman, revising these standards at appropriate intervals as the cost of living went up or down? In practice everyone knows that minimum-wage legislation is as yet in a tentative stage, that public opinion is by no means "solid" behind it, and that the work of conciliating and bringing into coöperative relations the members of all parties represented on a board is still by no means the least of its functions. The unequivocal language of our statutes, in other words, is to be regarded rather as a guidepost for further progress than as an index of present achievement, and the most that forward-looking members of boards and commissions can do is to keep its prospect fresh in the eyes of their colleagues. The great majority of representatives of the public at present tend inevitably to side with the employers so far as taking a vivid interest in the financial welfare of the business goes. Thus questions of interstate rivalry are always favorite topics of discussion—Will such and such a rate put the manufacturers of state A at a disadvantage with state B? Very few are the representatives of the public who will not give at least some weight to such considerations.

In the second place, the representatives of the employees are seldom of a caliber at all comparable to that of the other two groups. They are themselves, as a rule, working women unaccustomed to mathematical reasoning and unable to express, in a careful and convincing manner, even the facts they have clearly in mind. Knowing beforehand that something in the nature of a struggle is about to take place, they are all too apt either to capitulate prematurely or else to resort to mere sentimental appeals that lose them public confidence. Above all, they are in very many cases unable to plead all the facts they know with even the vigor and skill of which they are capable, because they are afraid of the ill will of their employers. All our laws, to be sure, insert severe penalties for any such discrimination on the part of employers against workers who testify; but indirect discrimination is difficult to trace, and the habit of a self-subordinating frame of mind is not easy to overcome.

Finally, all three groups (the employees of course especially) are apt to be woefully untrained in the handling of budget material; frequently it is difficult for them to grasp the very concept of an average. When it comes to drawing up a supposedly accurate schedule of necessary expenditures, therefore, the chances are a hundred to one that the major items will be listed in their most favorable (that is, least expensive) light, while many very important minor items will be overlooked entirely. Employees are quite as ready as employers to omit all such items from their calculations, with the result that the budgets to which they agree are commonly several very important dollars short.<sup>1</sup>

The following quotations from representatives of minimum-wage commissions may help to illustrate some of the foregoing points:

1. The bargaining character of boards; weight given to financial considerations:

The award of \$13.20 was really a compromise between the employers and employees who served on the conference, the former having recommended \$12 and the latter \$15 (Washington).<sup>2</sup>

Evidence is taken at each of the conferences on what the cost of living really is, but, so far, no attempt has been made to verify or sift or tabulate. . . . In the . . . conference the employers fought hard, and the employees were obstinate, so the result was really obtained by bargaining. . . . They (the employers of another conference) suggested that \$11 was a fair minimum . . . and the employees threw down their defiance in the shape of a claim that \$15 was necessary. . . . When a compromise was suggested in the shape of \$13.50, nobody offered the least objection . . . (British Columbia).<sup>3</sup>

The function of the commission in these debates is well summed up by the Washington representative:

In the final session, with only members of the board present, the wage question is always a struggle for a decent living by the employee

<sup>1</sup> Thus questions of average medical attention, of average time lost through illness or unavoidable industrial lay-off, of recreation, gifts, insurance, dues, charity, reading matter, vacation, legal holidays, house moving, postage, toilet supplies, railroad and car fare, extra food, etc., are tremendously skimped. The common practice is to lump a great many of them together under the catch-all "miscellaneous," with the resultant total often smaller than even one or two of its component parts would be if taken alone.

<sup>2</sup> Letter to the writer, November 19, 1918.

<sup>3</sup> Letter to the writer, December, 1918.



and a struggle to keep down "overhead cost" by the employer, and when it gets to the "bargaining" point (which it always has), the Commission should insist on the text and spirit of the law that the "cost of living" is the basis on which to decide the wage.

## 2. Weakness in bargaining power of the employees:

We consider that our minimum wage (\$8.50) is very low. However, it was as much as the employers on our Board would concede (Kansas).

Our experience (in 1913-1914) was not satisfactory. We found the employers represented their class too well, and they tried to get the minimum as low as possible, with no reference to the cost of living. The rates finally adopted ranged from \$8 to \$9. The employees were lacking in initiative because of their fear of the employers. One might be able to get better representatives of employees in those communities where women are better organized. The idea of getting men employees to represent women employees might be worth trying . . . (Minnesota).

## X. THE TIME ELEMENT: DIFFICULTIES IN REVISING RATES

One of the discouraging things about minimum-rate making is that during a period of rapidly changing prices, such as we have had ever since our first American wage laws went into effect, it takes a very short time for a rate to become antiquated.<sup>1</sup> When that happens it is difficult to get the commission to act—to start afresh on the weary round of investigations and hearings and orders. The more thorough the original investigation has been, the more will it necessarily have cost in time and money and the less funds and energy will there now be in the hands of the commission to repeat the process or any part of it. On the other hand, if the original survey has been cursory, or even if it has been painstaking but inexact, any revision based in the main on those previous findings will incorporate the errors of the former findings.

Of these two difficulties Minnesota furnishes a good example of the first, Oregon of the second. In Minnesota the old 1913-1914 rates of \$8-\$9 have recently been reissued by the Commission, not

<sup>1</sup>Take as an extreme case the calendar year 1917, during which the average (country-wide) increase in living costs was some 25 per cent. By the end of the year a \$10 wage would have been worth only \$8.

because anyone supposes that a woman can today live on them, but because the complete new state-wide survey which the Commission considers necessary would take so long to finish that it seemed better to have the old rates as a stop-gap meanwhile. In Oregon the 1918 rates were based exclusively on the rise in living costs since the adoption of the 1915-1916 rates; when, as a matter of fact, the 1915-1916 rates, themselves a revision of the 1913-1914 ones, had been markedly inadequate.<sup>1</sup> By 1919 the lag became so apparent that in August a fresh state-wide minimum of \$13.20 was enacted.

In distress over the 1918 situation of continuous inadequacy and upheaval, a representative of the Oregon Commission wrote:

There is too much of a tendency to fix the minimum . . . at a bare existence. . . . If we could work out a scientific wage basis and give the Industrial Welfare Commission power to advance that minimum each time the cost of living made a perceptible advance, a lot of the machinery which now must be used would be unnecessary.

To believers in the advantages of representative-wage-board administration, the concluding suggestion would seem but a counsel of despair. A more hopeful possibility, in the opinion of the writer, would be to give the Commission limited power of revision in accordance with the terms of an order, say for a year after the order went into effect, at the end of which time the usual conference machinery would have to be resorted to. More important than such a step, however, would be the establishment for the benefit of all our commissions of a thoroughly reliable clearing house to formulate the basic standards themselves. An elaborate federal agency such as our Bureau of Labor Statistics is of course eminently fitted for such a task. It would be perfectly feasible for them to issue a series of detailed and authoritative standards for self-supporting women, on a strictly commodity basis, as they are at present engaged in doing for families for the various large regional zones in the country that

<sup>1</sup> So far back as 1913 the social-survey committee of the Oregon Consumers' League, in a study which was at least more accurate than anything that has succeeded it in the state, had set about \$10 a week as a minimum living wage. Yet in 1915-1916 the rates agreed to ranged to only from \$8.56 to \$9.25. Applying (quite fairly and scientifically) the 34 per cent increase which the figures of the United States Bureau of Labor Statistics and other government agencies showed at the beginning of 1918 to these low rates, the resultant \$11.10-\$11.61 still fell far short of a full living minimum.

have sharply differentiated costs and customs. These general standards the bureau would of course revise periodically in accordance with the cost of living, so that all that would remain for the state boards and commissions would be to make those purely local adjustments for which they appear to be peculiarly fitted. Even if popular pressure and the exigency of business conditions did drive a given rate temporarily well below the established commodity minimum, it would be with the immense advantage of leaving the basic facts in the case undisguised and undisputed, and the natural burden of proof weighing against the continuance of the objectionable practice.

Pending such a series of federal surveys, much could be done by local commissions in comparing, adapting, and perfecting each other's best standards, and in applying locally all the government figures that do appear. The commission secretaries, if adequately paid and endowed with double membership on board and commission, as has been previously suggested, could take the lead in this work of standardization and education.

## XI. THE GROWING SCOPE OF WAGE AWARDS

Within the past six months a most remarkable and hopeful development has taken place in the direction of standardization of rates—a standardization within states and between neighboring states as well. Whereas formerly awards have always been made separately for separate trades (and often for different sections of the state), in the latter half of 1919 Wisconsin, California, and Oregon have followed the example (then unique) set by Washington a year ago, in establishing uniform rates for all industries throughout the state. In the case of the Pacific group, moreover, these rates are practically identical for all three states—\$13.20 and \$13.50 per forty-eight-hour week. For learners California and Oregon retain trade distinctions,<sup>1</sup> but for experienced adults the rates all read alike. The significance of this new departure can scarcely be overemphasized. It, more than anything else we have hitherto had to record, marks the breakdown of the old system of local business protection and the erection of living standards that can be scientifically impartial.

<sup>1</sup>This is quite proper in view of the varying international advantages of different trades. See sections XIV and XV below.

## XII. THE LONG VIEW: ACTUAL EARNINGS VERSUS HOURLY RATE

The final difficulty attending the decisions of board and commission is that of equating the nominal-wage rate to actual income. Nearly everyone would agree, on the one hand, that it would be absurd to pay a woman deliberately choosing part-time work a full week's wage. On the other hand, nearly everyone would agree that it would be equally unfair to pay a woman engaged for full-time work, and required to be on the premises all through working hours, for say only twenty-five hours of her time, if slack production, perhaps in another part of the factory, kept her machine unexpectedly idle at irregular intervals. But between these two extremes there are many gradations which prove most elusive to handle.

The great majority of our commissions have made no attempt to solve the difficulty. They have frankly adopted the hourly-rate scale throughout the industries with which they have had to deal, making no variation for chronically part time or seasonal industries. That is, the so-called "weekly wage rate" they enforce is based on the assumption that *all workers work the full legal number of hours each week*; it is only by so doing that they are to be enabled to support themselves. If they work less, no matter by whose fault, they will receive less than the week's minimum income that has been agreed upon as necessary decently to support life. Thus Massachusetts's order (November, 1918) for the wholesale-millinery industry contains the express proviso: "These rates (\$11 for the experienced adult) are for full-time work, by which is meant the full number of hours per week (fifty-four)<sup>1</sup> required by employers and permitted by the laws of the Commonwealth."<sup>2</sup> This is for one of the most seasonal industries in existence, where almost anyone would

<sup>1</sup> Since then (1919) the legal hours of work in Massachusetts for women and minors have been reduced to forty-eight.

<sup>2</sup> U. S. Bureau of Labor Statistics, *Monthly Labor Review*, Vol. VIII, No. 2 (1919), p. 195. In the Arkansas flat-rate law the same principle is expressed even more rigidly: "*All female workers working less than nine hours per day shall receive the same wages per hour as those working nine hours per day*" (italics mine); while the very recent state-wide Wisconsin order (June, 1919) omits the mention of a weekly norm at all: "No employer shall employ any experienced female at a wage rate of less than 22 cents per hour."

agree it is impossible to expect the employee to find full supplementary occupation in the short stretches between seasons.<sup>1</sup>

A slightly more hopeful position is shown in two orders of Oregon and Washington. The Oregon order (April, 1918) reads:

When business conditions render it impracticable for an employer to furnish to any employee full-time employment (fifty-four hours), the employer shall not be required to pay such employee any greater sum than the hourly wage for the number of hours of actual employment, *provided such employer shall so arrange consecutive hours of continuous employment* that each employee may have a fair opportunity [sic!] for securing such employment as will enable her to earn a full week's wage.

Washington is a trifle more explicit as to what constitutes "employment," but fails to specify that the hours be consecutive. Among the 1915 rulings we read:

(4) When an employee is required to hold herself at certain hours at the call or service of an employer, such hours shall be included as hours of employment.

(5) . . . any arbitrary condition imposed by the employer which prevent her from earning . . . [a living] wage is contrary to the intent and spirit of the law. *In exceptional cases*, where business conditions offer less than full-time employment (eight hours a day, forty-eight a week), *a regular schedule of hours shall be arranged* between employer and employee . . . [so] that she may not be deprived of arranging for additional employment elsewhere.<sup>2</sup>

In striking contrast to these half-hearted attempts at amelioration is the November, 1918, decree of the California Commission. Here for the first time we have a recognition of the principle that it is the employer who is responsible for keeping the employee's supply of work steady. The decree reads:

<sup>1</sup> The same provision is to be found in the more recent decreases for canning and candy-making, also seasonal (July, 1919). (See Massachusetts Minimum-Wage Commission Bulletins 18 and 19.)

<sup>2</sup> I. W. C. Rulings, Form 17A (*italics mine*). The general War Emergency Order of September, 1918, adds the following clauses: "Every . . . firm . . . offering less than full-time employment to female employees in any . . . trade . . . shall post in a conspicuous place in the establishment a proper schedule of hours to be observed, for such period of time in advance as the Industrial Welfare Commission shall in its discretion determine, not later than noon of the *preceding day*" (I. W. C. Order No. 18, September 10, 1918; *italics mine*).

No person, firm, or corporation shall employ, or suffer, or permit an experienced woman or minor to be employed in any manufacturing industry at a rate of wages less than \$10 for a forty-eight-hour week (21 cents per hour). *If any employer does not provide the full forty-eight hours of employment during any week, he must pay to all experienced adult and minor workers not less than 25 cents per hour for the time worked.*<sup>1</sup>

It will be seen, of course, that this California scheme, a "penalty differential" we might call it, does not help the worker who is laid off for a full week or more. In fact, if the differential were made very pronounced it might well encourage an employer in a seasonal industry (such as candy, millinery, or paper boxes) who was faced with the alternative of using all of his force on part time or using only a portion of them on full time, to choose the latter and lay off as many as possible so as to be able to employ the remainder at the full-time rate. Employments with a "peak load" on certain days of the week would, however, be materially bettered. Thus the laundry industry could not longer dock its employees for the short time provided them on Mondays and Saturdays.

A more drastic step in the same direction has since been taken by the Minnesota Commission. Their July, 1919, decree establishes a flat weekly wage of \$11 "per week of forty-eight hours *or less*."<sup>2</sup> The short-week employer is thereby penalized by the full amount of his underemployment.

A method that indirectly attacks the longer-time seasonal industries has, however, recently been introduced by the Wisconsin Commission. Their noteworthy first-wage order (June, 1919) provides that "in seasonal industries operating only for a few months during the year no learning period is recognized, and all female and minor employees . . . shall be paid . . . [the full experienced adult minimum]."<sup>3</sup> Since in ordinary establishments lower rates may be paid

<sup>1</sup> U. S. Bureau of Labor Statistics, Monthly Labor Review, Vol. VIII, No. 2, p. 192 (*italics mine*). Even more elaborate provisions are made in the Mercantile Order of June, 1919, whereby part-time workers receive 35 cents an hour instead of 28.

<sup>2</sup> *Italics mine*. Above forty-eight hours the rate is no higher, namely, still 23 cents an hour.

<sup>3</sup> Industrial Commission of Wisconsin, Order of June 27, 1919, sect. 4. It should, however, be noted that the order explicitly omits all provision for the chronically short-hour industry. In section 1 of the "Findings of Fact"

to as many as 25 per cent of the employees, this means a very real penalty for the seasonal trade.<sup>1</sup>

It would, however, doubtless be advisable to assess industries that are notoriously seasonal even more directly by raising their general minimum for experienced workers as well. This, on a weekly basis, was the system adopted by Australian boards for the highly irregular occupation of dock laborer. "In setting the minimum hourly rate . . . , the necessary cost of a week's living was divided by the average number of hours of work obtained weekly."<sup>2</sup>

This system has also been adopted by Massachusetts in a recent ruling on office-cleaners (January, 1919).<sup>3</sup> This ruling is in its way quite as remarkable as the ones quoted from California and Wisconsin. Here the Commission had found by previous investigation that the average number of hours worked per week at the occupation was only thirty-six, and that four fifths of the women worked at night. The new ruling provides a 30-cent hourly rate for night work and a 26-cent rate for day work. On the basis of the full legal fifty-four-hour week, even the day rate would yield \$14, whereas the budget agreed to by the board amounted to only \$11.54. It was therefore the typical thirty-six-hour worker whose case was really being provided for. True to Massachusetts tradition, she would receive somewhat less than the budget allowed, namely, at the 30-cent rate, \$10.80 a week, and at the 26-cent rate, \$9.26. These are not very munificent sums, but the recognition they show of the short-time problem is extremely important.

However, the idea suggested by the California decree, of making the rate directly enforceable upon the individual employer who fails to provide full work, *and upon him alone*, seems too good to lose sight

we read: "Many items in the cost of living of female and minor employees vary directly with the number of hours they are required to work. Those who have short hours of labor . . . having time to do much work for themselves . . ." etc. Section 1 of the order proper accordingly reads baldly: "No employer shall employ any experienced female or . . . minor . . . at a wage rate of less than 22 cents per hour."

<sup>1</sup>On the Wisconsin scale it would amount to about 3 to 4 per cent of the wages bill.

<sup>2</sup>*New Statesman*, June 6, 1914, p. 263, quoted in Commons and Andrews, *Principles of Labor Legislation*, p. 182.

<sup>3</sup>See U. S. Bureau of Labor Statistics, *Monthly Labor Review*, Vol. VIII, No. 4 (1919), pp. 186-187.

of. Perhaps a combination of both methods would be possible; namely, a slight penalty for the habitually seasonal or short-time industry as a whole in the shape of a higher hourly rate, and an additional differential for the employer whose work was unusually irregular.<sup>1</sup>

A point which it is important to stress, while dealing with the matter of hourly rates, is that it is closely bound up with the question of the legal hours of employment in each state. The same weekly minimum may mean very different things to both employer and employee if the number of hours for which it is being paid is different. Thus Oregon in April of 1918 changed her minimum for manufactures from \$8.64 to \$11.61. Meanwhile her neighbors, Washington and California, were paying only \$10.<sup>2</sup> At first the employer members of her board protested at this disproportionate advance, but it was successfully pointed out to them that, since both Washington and California were limited to a forty-eight-hour week, while Oregon worked fifty-four, the respective wage rates for the three states would be rendered practically equal, thus:

Washington and California . .	\$10.00 a week ÷ 48 hours = 21 cents per hour <sup>3</sup>
Oregon . . . . .	\$11.61 a week ÷ 54 hours = 21½ cents per hour

<sup>1</sup>This could be assessed in some such way as the one originally outlined by the chairman of the first Massachusetts brush board (quoted in Annual Report of New York Factory Investigating Commission, Vol. VI (1915), Appendix IV, p. 633): "Each weekly pay day the minimum weekly rate set by this board shall be multiplied by ten, and if the total earnings during that ten-week period immediately preceding each weekly pay day do not equal that amount, the difference shall be paid her each week." A simpler method, however, in the opinion of the writer would be to assess each employer at an hourly rate that roughly corresponds to the average per-capita short time that he had provided during a specified period in the recent past. Thus an employer who had averaged 20 per cent fluctuation above that allowed for in the general trade estimate would have to pay a 20 per cent differential on his minimum hourly rate. (Needless to say, "short time" in the above sense does not include time lost by the worker's own fault, i.e., voluntary absenteeism.)

<sup>2</sup>The California decrees at this time did not cover manufacture, but \$10 was the rate for stores, etc.

<sup>3</sup>Incidentally the Oregon members were made to realize that hitherto the advantage had lain very heavily on the other side and that, nevertheless, their neighbors had not been ruined. Up to this time, when the Washington and California rates were already \$10, or 21 cents per hour, the Oregon rates for manufacture had ranged from \$8.25 to \$8.64, or 15½-16 cents per hour. (The higher rate was for the city of Portland.)



The close connection between hours of work and wages per hour is doubtless one very important reason why so many of our states have assigned hours as well as wages to the jurisdiction of their minimum-wage ("industrial welfare") commissions. Where no direct connection between the hour-fixing and the wage-fixing machinery of a state exists, it is always possible to reduce the hourly wage by increasing the number of hours for a given industry. Thus a representative of the Washington Commission writes: "During one session of the Legislature the . . . Association . . . attempted to secure an amendment to the woman's eight-hour law providing for an emergency clause allowing overtime. Had this passed, it would have indirectly reduced wages, as all wages are based on an eight-hour day and six-day week."<sup>1</sup> And again, "The question of seasonal industries, such as fish and fruit canning, do not come under the Factory Orders and the wage<sup>2</sup> applies to them." The converse of this connection is seen where the legal hours of work are suddenly reduced. The wage per hour is automatically raised. Thus Massachusetts's adoption (1919) of a forty-eight-hour week in place of a fifty-four gives her women nearly a 13 per cent hourly increase.

### XIII. SPECIAL CLASS OF WORKERS: THE DEFECTIVE

Besides the difficulties attendant upon the setting of the regular rate for normal adult women, our minimum-wage commissions have to face the problems of three special classes of workers generally recognized as substandard: the young, the inexperienced, and the defective. Of these the defective have thus far proved much the easiest to deal with.

In all our states save Massachusetts, Wisconsin, and Kansas the class is narrowed to include only adult women who are physically defective.<sup>3</sup> The method of handling these cases is always by individual license, issuable by the commission direct. The wage boards naturally have nothing to do with them. Each license sets a special

<sup>1</sup>Letter to the writer, October 26, 1918.

<sup>2</sup>I.e. the rate per hour. This gives a higher weekly wage to these long-hour industries.

<sup>3</sup>In Wisconsin, however, it applies to "any female or minor unable to earn the living wage," and in Massachusetts and Kansas to "any employee . . . of less than ordinary ability. . . ."

substandard rate for the worker concerned, which may be temporary or permanent according to the nature of the defect and the wording of the law. Some laws limit the proportion of defectives that may be employed in any one establishment to one in ten.

So far the total number of licenses issued by the active minimum-wage states has been surprisingly small. As one secretary writes, "Employers evidently do not want to ask for defectives' permits unless there is no question about the employee's being unable to make a living because of . . . her defect." Washington reports only fifty in five years of commission activity. The California Commission states in respect to the laundry industry, where infirm workers are more easily accommodated than elsewhere: "No license has been granted to any woman except upon the signed statement of a licensed physician that the applicant was not able to work to normal capacity at ordinary tasks, either because of age or physical disability. Even then no license is granted for less than \$8. . . . In November, 1918, less than 3 per cent of the total employees . . . [held] such permits."<sup>1</sup>

None of these states report any difficulty because of applications from the mentally defective. In many cases, of course, the mentally defective would also be physically handicapped and thus receive their classification without question. Of the six licenses thus far issued by the Minnesota Commission three were for women thus doubly handicapped. Our informant states that no case of purely mental defect has as yet arisen. The Washington Commission reports similarly, "We have had no application from a mentally subnormal person."

In view of the large number of mental defectives known to be at large in our population, this state of affairs is certainly surprising. Perhaps the majority of them find their way into simple piecework operations where their reduced output can affect no one but themselves.<sup>2</sup> Others doubtless drift about from job to job, never making themselves valuable enough to an employer to cause him even to try

<sup>1</sup>Third Biennial Report, I. W. C. of California, p. 70.

<sup>2</sup>However, in a state like California they would probably be discovered even there if large numbers congregated in any one branch of piecework, for California has the provision in her ruling on manufactures that 66⅔ per cent of all pieceworkers employed by any one establishment must earn over the weekly rate (I. W. C. Order No. 11, amended 1919, sect. 8, (d)).

for a license for them. But a large remainder appear to be still unaccounted for. Can it be that much of our industry is so simplified and routinized that even a moron is good enough to support herself at it? Nay, possibly that she may in some respects be preferable to her normal and therefore more restless sister?

In the future without doubt the problem of the defective will grow more acute, as minimum-wage legislation is extended to our more thickly settled industrial states and as the minimums in our existing rulings are raised to something nearer a full living wage. A clear understanding of the ground of licensing would then be imperative. The Massachusetts-Kansas-Wisconsin system of "wide open" licenses would doubtless offer increasing dangers, while a definition that strictly excluded all but the physically incapacitated would doubtless err equally on the other side.

As the number of licenses grows, opportunities for constructive social work on the part of the commissions should grow also. They can become the logical centralizing agency, the clearing house, for putting adult women defectives in touch with other appropriate agencies. The system of renewable licenses will enable them to keep track of the progress of each case, while threat of forfeiture gives them unusual persuasive power.

#### XIV. MINORS AND APPRENTICES

The problem of the untrained and the immature worker is far more puzzling. How long does it take a woman to learn a trade? (What trade?) How much longer does it take her if she is not a woman but a young girl? (In which trades does age count for most?) Are there any trades in which an experienced girl under eighteen is as useful as if she were grown? What is a trade anyway? How far shall one go in subdividing our complicated industry to tell when a woman who is changing her position must begin at an apprentice wage over again? These are some of the questions that have gradually been brought home to our commissions in the course of their operations.

The method of administering the problem is unfortunately somewhat complicated. In most of our laws it is provided that both these classes of workers shall receive special rates, but that, while the rate

for minors shall be fixed by the commission direct, that for adult learners shall be reached by the usual board machinery.<sup>1</sup> It may well be that some of the planlessness of which we shall hereafter have cause to complain is due to this divided responsibility. On the face of it the two problems are so closely related that it seems only reasonable to have the same agency responsible for both. That agency, in view of the extreme complexity of the subject, would naturally be the central commission. However, the technical trade advice of the lower boards could be made extremely valuable to the commission, provided it were not made finally binding.

The Oregon apprenticeship rulings show very interestingly how one commission, or, if you will, one group of boards, has gradually been awakening to the complexity of its task. In the 1913 apprenticeship conferences Oregon merely issued a flat-rate minimum of \$6 per fifty-four-hour week for all industries, "and the maximum length of time such workers shall be considered inexperienced in *any one* industry shall . . . be . . . one year."<sup>2</sup> Here we have no attempt to define what is to be considered "one industry" and no distinction between apprentices who are brand-new and those who are almost completely experienced. Moreover, the learning period itself is extremely long. If such length had any justification at all, one would suppose it could only be on the ground of acquainting the learner with a good many branches of a rather difficult trade.

The commissioners themselves, however, apparently had no clear idea on the subject, for they seem to have done nothing to prevent employers from taking advantage of the loose wording of the ruling. By 1916 such grave abuses had sprung up that the new conference then in session was instructed to consider a refinement of terms. "Some employers dismissed girls as soon as the first year had expired or shifted them to slightly new work in different departments,

<sup>1</sup> The laws of two states, California and Washington, make no express distinction between the wages to be paid the skilled and the unskilled; and California makes no distinction between minors and adults. Both these states, however, empower the commission to issue individual apprenticeship licenses. In practice this provision appears to have made for greater flexibility of rulings. (Note, however, that in her general War Emergency Order of November, 1918, Washington chose to ignore all differences of skill—the flat rate of \$13.20 being supposed to apply to all women and the \$9 to all minors.)

<sup>2</sup> Quoted in "The Oregon Minimum Wage Law" (Reed College A. B. thesis) by Samuel B. Weinstein, p. 21 (*italics mine*).

thus starting them on a second year of apprenticeship at \$1 a day."<sup>1</sup> It apparently never occurred to the conference to go so far as to require the new employer to pay the girl what she had last been receiving or to force the old employer to increase the girl's wage at the expiration of a year of any sort of service with him. Instead, they tried the method of inducements: they adopted a rising scale, beginning at \$6 as before, but increasing \$1 every four months, so that by the end of the year the apprentice would be receiving very nearly the full adult minimum and the temptation to dismiss her would be very much reduced. This device of the graduated scale is now in use by practically all our commission states.<sup>2</sup> It operates as an incentive to the employee to stick to her job as well as to the employer to retain her.

By 1918 Oregon had decided to attempt a refinement of the graduated scale. When it came to raising the general level of wage rulings in accordance with war prices, the mercantile conference decided to abandon the policy of fixed three-month periods and to substitute irregular periods, the first very much shorter than the others, to encourage the new hand to overcome the inertia of the first few weeks; moreover, they decided to shorten the total apprenticeship term for their industry from a year to eight months.<sup>3</sup>

All the Oregon 1918 conferences finally realized the necessity of meeting squarely the abuse of shifting girls about from one department to another. They accordingly had the Commission issue the following ruling:

After any woman shall have completed any prescribed period of service as an apprentice, she shall not thereafter, *while working for the same employer*, be paid a wage less than that prescribed for the next succeeding period, unless a permit therefor shall be issued by the Industrial Welfare Commission.<sup>4</sup>

<sup>1</sup>Quoted in "The Oregon Minimum Wage Law" (Reed College A. B. thesis) by Samuel B. Weinstein, p. 31.

<sup>2</sup>California in her latest order (No. 5, amended June, 1919) adds the express warning, "Learners' permits will be withheld by the Commission where . . . firms . . . make a practice of dismissing learners when they reach their promotional periods."

<sup>3</sup>This system has been perpetuated under the new 1919 rulings. The mercantile scale now runs: first month, \$9 per forty-eight-hour week; next three months, \$10.50; last four months, \$12; full adult wage, \$13.20. A somewhat similar system had previously been in force in Washington for the laundry and telephone industries. (Oregon I. W. C. Order No. 37, August 12, 1918, sect. 3.)

<sup>4</sup>I. W. C. Order No. 36, April 12, 1918, sect. 5 (*italics mine*).

So far Oregon has not issued any ruling to prohibit a *new* employer from engaging a partly experienced girl at a beginner's wage. Discussion at present centers about the question of how greatly variations in individual firm methods justify at least a short initial term of fresh apprenticeship.<sup>1</sup> Wisconsin and Arkansas alone have faced the issue unequivocally. The Arkansas flat-rate law (1915) states, "All time served as inexperienced workers or apprentices shall be cumulative"; while the Wisconsin Commission's first-wage order (June, 1919) reads, "Employees shall be deemed experienced after six months of employment in the trade or industry, whether for the same employer or different employers."<sup>2</sup>

In general it may safely be said that the problems of apprenticeship have not received the thorough and dispassionate study which they demand; that, in fact, they have been slighted as compared with the problems of the experienced worker. Very probably the chief fault lies in a lack of vital interest on the part of the employees' representatives,—their own apprenticeship period lying so very far in the background of their memory,—combined with a lack of intimate knowledge of trade processes on the part of the representatives of the public, and a natural desire on the part of the employers to "get a bit of their own back" where they find least opposition to it. Unquestionably the great majority of our apprenticeship periods have been too long, the wages too low, the instruction indifferent, and the opportunity for abuses in the way of repetition of half-completed periods too little guarded against.<sup>3</sup>

It would take a very thorough revamping of our present industrial methods to give inexperienced women the most rapid and thorough training of which they are capable; but surely the process could be greatly speeded up by the mere mechanical shortening of the learning

<sup>1</sup>Some commissions take the mild precaution of requiring the old employer at any time to furnish the apprentice upon request with a certificate showing the length of her service with him. Arkansas contains this provision in her statute.

<sup>2</sup>I. W. C. Order of June 27, 1919, sect. 4.

<sup>3</sup>One abuse very commonly guarded against is the employment of a disproportionate number of apprentices in any one establishment. Thus the new California rulings for . . . stores and factories provide that: "The total number of learners . . . (adult and minor combined) shall not exceed 33⅓ per cent of the total number of [workers] employed" (sect. 3). See I. W. C. Orders 5 and 11, amended 1919, sect. 1, (e).

period, forcing the employer to concentrate whatever training he did propose to give into a shorter time, and protecting him, with low initial wages but a rapidly rising scale, on the one hand from the temptation of discharging the partially trained, and on the other from the inclination of the partially trained themselves to wander off and seek a fresh trade.

The extent to which the length of the apprenticeship period may be a matter of local custom—or rather of local inertia—is shown by a comparison of three recent laundry awards of Massachusetts and Arkansas. In Massachusetts all apprenticeship periods are extremely long (probably yet another reflection upon her system of nonenforceable awards), ranging from one to a full two years.<sup>1</sup> Her laundry award whereby workers are “held experienced after one year, if absences have not been of unreasonable duration,” is therefore by no means exceptional.<sup>2</sup> In Arkansas, by the 1915 flat-rate statute, the apprenticeship period for all trades (laundries therefore included) was set at six months, just half that of Massachusetts. Yet when in the summer of 1918 the National War Labor Board came into that state to settle the laundry difficulties in Little Rock, it not only raised the whole wage scale tremendously but promptly reduced the six-month period to *thirty days*.<sup>3</sup> Here we have a variation in three typical rulings of 1200 per cent.<sup>4</sup> Which of the three was right?<sup>5</sup>

<sup>1</sup> See table, “Minimum Wage Regulations for Women, January 1, 1917,” in Oregon Minimum Wage Brief, p. 76.

<sup>2</sup> Thus millinery (December, 1918) requires two years, candy-making (July, 1919) a year and a half, and even canning (July, 1919) a year! Contrast with this last the recent Wisconsin decree: “In seasonal industries operating only for a few months during the year no learning period is recognized, and all female and minor employees . . . shall be paid . . . [the full experienced-adult wage]” (Minimum Wage Order No. 1, June 27, 1919, sect. 4).

<sup>3</sup> National War Labor Board, Docket No. 233, Joint Report of Section *In re Employees vs. Laundry Owners*, Little Rock, Arkansas.

<sup>4</sup> An almost equally striking variation is found in the laundry rulings (prior to September, 1918) of the three Pacific coast states, where conditions of work might be considered more closely equivalent and where no outside agency has interfered. In Oregon the period was one year; in California, fifteen months; and in Washington, two months! The California period has now been reduced to six months, while Washington’s 1918 rulings recognize no learning period at all.

<sup>5</sup> The arguments for short-time training are certainly borne out by the experience of the U. S. Shipping Board, which during 1918 carried on apprenticeship courses for all the various difficult shipyard trades. The learners, who

## XV. SOME SPECIAL PROBLEMS OF MINORS

For the workers under eighteen the difficulty of securing adequate training in the shortest possible time is complicated by the desirability of keeping the younger of them out of industry altogether. A high initial wage, it may cogently be argued, directly encourages the small boy or girl of fourteen to leave school and go to work. On the other hand, a very low initial wage encourages the employer to seek out all the immature help he can. Which is stronger, the inducement to the child and its parents or the inducement to the employer?

Most of our commissions have taken a middle ground, apparently assuming that while it is their primary duty to protect the child from crass wage exploitation, they need not scale up his wages too meticulously in accordance with his probable productivity. Thus Oregon's 1919 orders assigned all minors between fourteen and fifteen a flat rate of \$6, those between fifteen and sixteen, \$7.20.<sup>1</sup> In Washington, for two years previously, the flat rate for all under sixteen was \$6.<sup>2</sup> In their war-time emergency conference the Washington Commission, however, appears to have swung over to the full-productivity idea: its minimum for all minors is now \$9, with a dollar increase every six months of employment.<sup>3</sup> In British Columbia the Commission has taken the commendable stand of trying to keep the girl under sixteen out of industry altogether by "preventing, except under special license, the employment of such girls" and by "collaborating with the educational authorities to raise the age for leaving school [and] . . . to provide more satisfactory methods for industrial . . . education."<sup>4</sup>

For minors over sixteen there seems no good reason to prolong the low-wage period beyond what is absolutely necessary by reason

"were drawn principally from unskilled shipyard work and from manufacturing," were after their training able in the main to hold their own with experienced journeymen. Yet "statistics from twenty-one yards indicate that the average training period for all men was nineteen days." (See P. H. Douglas and F. E. Wolfe, "Labor Administration in the Shipbuilding Industry during the War," *Journal of Political Economy*, May, 1919, pp. 378-379.)

<sup>1</sup> Oregon I. W. C. Order No. 46, August 12, 1919.

<sup>2</sup> Washington I. W. C. Order, September 14, 1917.

<sup>3</sup> I.e. until the adult minimum of \$13.20 is reached.

<sup>4</sup> Letter to the writer by a close associate of the Commission, January 17, 1919.



of lack of skill. All our commissions now arrange a rising apprentice scale for these workers, but in most states the rise is unduly slow. Thus in Oregon, while the initial wage for minors over sixteen is nearly as high as that for women learners (viz. \$8.50 instead of \$9), the subsequent advance toward the full minimum takes three times as long. "For the purpose of determining a rising scale for minor apprentices the working time of female minors between sixteen and eighteen years shall be divided into periods of three months each. Each period . . . shall be considered the equivalent of one month in the corresponding period of the apprenticeship of the adult worker."<sup>1</sup> There are no exceptions to this rule. Consequently no girl under eighteen, however proficient she may be and however long her trade experience (it may be almost four years), can ever command the adult minimum. Minors over sixteen who are not apprentices also begin at \$8.50 and are advanced 50 cents every six months.

In Massachusetts the rise is even slower. There in the retail-store industry no girl, however experienced, can command more than an apprentice wage until she is over nineteen; while in women's clothing factories she must be nineteen and a half.

In California, on the other hand, mere immaturity as such is not allowed to affect the status of a worker once she is partially experienced. Here in the laundry and hotel and restaurant industries the girl of from fourteen to eighteen starts on an exact par with her adult sister; in stores, factories, and offices she starts at a dollar lower wage, but after a given initial period continues on through the regular stages of adult apprenticeship at adult wages; only in "unskilled and unclassified" occupations does she remain permanently below adult par.<sup>2</sup>

In Wisconsin the exceptionally proficient minor is safeguarded by the provision: "Permit children producing the same output as employees in a higher wage classification shall be paid not less than the minimum wage rate for such class."<sup>3</sup>

<sup>1</sup> I. W. C. Order No. 46, sect. 2.

<sup>2</sup> For three weeks she receives \$8 instead of the adult's \$10, and thereafter \$10 instead of the adult's \$13.50.

<sup>3</sup> In Order of June 27, 1919, sect. 3.

## CONCLUSION

In summing up this review of American minimum-wage administration, it may be well to group our recommendations for the future under three definite heads: first, the need for a real living standard; second, the need for a more flexible standard; third, the need for centralization of administrative responsibility.

## I. A REAL LIVING STANDARD

1. First and foremost among our needs is undoubtedly that of a clear, unequivocal, basic standard of living for the working woman, a standard that shall take account of the whole range of her necessities, not only day by day but year by year.<sup>1</sup> For this we should have a *standard budget*, formulated preferably by our federal Bureau of Labor Statistics, revised by them periodically in accordance with changes in the cost of living, and adjustable by local boards and commissions to local conditions.

2. To reduce this budget to terms of *weekly wage rate* we must have (a) a clear-cut policy on the part of boards and commissions that the "living wage" shall mean a "living income" the year round; (b) more accurate information by these bodies as to local irregularities of employment; (c) a simple method of advancing hourly rates by "irregularity differentials" whenever trades or individual establishments fail to provide full-time work.

3. A necessary corollary to such a full living standard would be the extension of our special provisions for substandard workers. (a) For defectives, who would now of course include the mentally incapable, the double system of individual licensing plus limitation of numbers in any one establishment might well be revised to include a third element, namely, the selection of a series of especially "approved" occupations in which such workers could be allowed to congregate without limit; each plant in the "approved" list being subject to special supervision by the commission—all defective workers, meanwhile, whether working in an "approved" establishment or at large, to be inspected and relicensed periodically. (b) For

<sup>1</sup> For a detailed discussion of the components of such a standard see D. W. Douglas, "The Standard of Living for Working Women: a Criticism of Current Theories," *Quarterly Journal of Economics*, February, 1920.

*experienced workers and minors* we need a more scientific series of state-wide "rock-bottom" minimums, graded according to age; and above these a series of specially adjusted apprentice minimums that should be as varied as the trades they represent. That, should be left to the discretion of the commission and boards whether for a given trade there should be any distinction at all between the comparatively new and the old hand or between the youthful and the adult; and if there should, just what ought to be their relative rates of advance. The number of apprentices allowed in any one establishment should doubtless continue to be limited.

## II. A FLEXIBLE STANDARD

Next only to the need for a standard that shall be adequate at the outset is the need for a greater flexibility in its application. I have already pointed out the need for (1) more rapid revision of established rates in times of sudden price changes and have suggested that for specified periods of a year or so the commissions be given *ad interim* power to revise existing rates. They could readily do this in accordance with the cost-of-living index numbers which the Bureau of Labor Statistics could furnish them. Two other devices for increasing flexibility are, however, no less important. These are (2) the forestalling of bad wage conditions that are as yet only apprehended, by empowering the commission to issue rulings for trades that may at the time still be on a living basis; and (3) the slowing off of radical advances for the employer by permitting the commission under exceptional circumstances to distribute the scheduled advance in wages over a specified period. Reform number three is a refinement over the method now in force in Washington (where the application of the whole rate as such may be postponed), and is to be found in its present form in the excellent new British Trades Board Act of 1918.<sup>1</sup>

<sup>1</sup>It was also used, although without express legal provision, by the original Massachusetts Brush Makers' Wage Board in 1914:—"The rate to go into effect at once shall be 15½ cents an hour. At the end of a year's time the rate shall automatically become 18 cents. . . ." (Second Annual Report of the Minimum Wage Commission of Massachusetts, p. 9). Ordinarily Massachusetts follows the Washington method. Thus the candy decree of last July does not go into effect until January.

Number two occurs in the revised British statute alone.<sup>1</sup> Both these innovations are of great significance; the anticipation of low wages is especially valuable in a time of sudden oversupply of labor such as has occurred in many industries since the close of the war, while the gradual application of certain rates is sure to become a practical necessity as the living-wage idea becomes more firmly established and radical advances grow more common. Where some compromise with purely financial considerations appears inevitable, this form is infinitely preferable to the current one (of setting up a final rate that is substandard), since this proposed device is self-remedying and deceives no one.

### III. CENTRALIZATION OF ADMINISTRATIVE RESPONSIBILITY

Finally we need a greater concentration of power and of the responsibility that goes with it if our commissions are to operate effectively in the larger industrial states. The writer has already pointed out the advantages that accrue from (1) empowering the commission upon occasion to *overrule the advice of the boards* and (2) *giving the executive officer of the commission a voting membership* on both the boards and the commission itself. The combination of these two devices should go far toward helping to organize the information at the commission's disposal and bringing it to bear impartially upon the formation of a consistent policy.

3. A more radical change in organization that might prove very advantageous in our larger states would be to place the whole minimum-wage commission under the charge of the existing Department of Labor, making of it an *independent bureau* with a special *Deputy Commissioner of Labor at its head*. He would then become the paid executive officer of the commission, taking over the representative duties we were just now assigning to the secretary. This

<sup>1</sup> U. S. Bureau of Labor Statistics, Monthly Labor Review, Vol. VII, No. 5, 1918, paraphrases and comments upon these two provisions as follows: "The new act permits the Minister of Labor to apply its provisions to any trade in which it appears to him that no adequate machinery exists for the effective regulation of wages. *It is thus possible to forestall an apprehended fall in wages in view of changes or anticipated changes in conditions of employment.* . . . Rates may also be fixed to come into operation successively on the expiration of specified periods, and variations in rates may be declared operative only during specified periods."

system would have the advantage of placing freely at the commission's disposal all the information that could be gathered by the department,<sup>1</sup> as well as its full power of inspection and enforcement, without giving up the commission's local autonomy.<sup>2</sup> Its possible disadvantage would be the transfer to the commission of any inefficiency that lurked in the department.

4. A most significant centralization in administrative methods (as distinct from organization) that already has taken place in four of our states is the widening in scope of wage awards. As has been pointed out, the fixing of state-wide adult rates, combined with carefully specialized trade provisions for the inexperienced, marks the opening of a new era in scientific standards.

5. A useful precursor to such standardization would be the regular holding of *regional conferences* for groups of states that face the same economic problems. Such a conference was held tentatively and informally between the three Pacific coast states at the invitation of the Washington Commission, just before that body called together its own war-emergency conference. It is highly probable that it was influential in the subsequent raising of the California and Oregon rates to the uniform Washington level. Similarly, when once the perennially reintroduced New York and Pennsylvania bills become law, a North Atlantic conference between these states and Massachusetts (and perhaps by that time New Jersey) would certainly appear to be in order. In view of the sometimes wide variations of the law between neighboring states it would of course be best not to introduce any formality into these meetings, but to have the understandings arrived at mere "gentlemen's agreements." As such they should go far to allay interstate misunderstandings and break the force of the constantly recurring employers' argument in regard to throttling competition. They should certainly serve as a spur to the laggard states in each group.

<sup>1</sup>Most of our existing laws provide that the department shall collect data for the commission upon request, but so long as the two agencies remain separate this is apt to cause friction. The new Texas law overcomes this difficulty by providing that the head of the Bureau of Labor Statistics shall himself serve as chairman of the new commission.

<sup>2</sup>The new North Dakota law gives the task of wage-setting into the hands of the existing Workmen's Compensation Bureau; while the 1919 reorganization act of Massachusetts transfers it to the three members of the newly created Department of Labor and Industries who form the State Board of Conciliation.

In making all these specific recommendations we have not forgotten that at the basis of all our reforms must lie a growth of public confidence and interest in the work of the commissions. The chain of minimum-wage activity can be no stronger than its weakest link, which is the assistance every commission has to receive from the public—in the form of adequate representation on its boards, attendance at its hearings, support from the courts, and, above all, adequate appropriations from the state legislature. The financial difficulties under which some of our most progressive commissions have been struggling make the degree of their success really astounding.<sup>1</sup> The commissions themselves must of course do all they can to extend the field of their publicity. Whenever, as in the case of Massachusetts, they have been blessed with sufficient funds, they have indeed gone into print very vigorously, if somewhat learnedly. But the larger and less dignified task of widespread popular appeal must necessarily rest with the outside friends of the movement. If half the energy that habitually goes to pushing minimum-wage campaigns were carried over and devoted to popularizing the work of the commissions when once they have been established, the whole range of problems we have been discussing would be immensely simplified.

DOROTHY W. DOUGLAS

SEATTLE, WASHINGTON

<sup>1</sup> Is it, for example, generally known that the Oregon Commission has an annual appropriation for *all* purposes (including secretary's salary, office expenses, investigations, rent, publicity, inspection, and enforcement!) of only \$3500?

## XLIV

### OPERATION OF THE INDUSTRIAL DISPUTES INVESTIGATION ACT OF CANADA<sup>1</sup>

#### INTRODUCTION

OMITTING administrative details, the essential features of the Canadian Industrial Disputes Investigation Act may be expressed in a statement of purpose and scope. The purpose of the act as expressed in the complete title is "to aid in the prevention and settlement of strikes and lockouts in mines and industries connected with public utilities."<sup>2</sup> Although the title thus disclaims restriction of the right to strike or lock out and limits the scope to disputes in industries affecting directly the public welfare, the act provides that a strike or lockout in these industries is illegal until the dispute has been reported on by a board of conciliation and investigation and, further, that industries other than those specified may be brought within the scope of the act by agreement of both parties to the dispute, the right to strike or lock out being suspended during an investigation. This restriction upon the right to strike or lock out pending an investigation has caused the act to be known generally as the Compulsory Investigation Act.

The Canadian Industrial Disputes Investigation Act has been in operation since March 22, 1907.<sup>3</sup> The numerous reports appearing as a result of official and personal inquiries in addition to the monthly and annual publications of the Canadian Department of Labor are evidences of the widespread interest in the results of the administration of the act. For the most part, however, reports on the act have dealt with disputes referred to boards for adjustment or in

<sup>1</sup>Taken in part from the U. S. Bureau of Labor Statistics, Bulletin No. 233 (1918).

<sup>2</sup>Scope extended March 23, 1916, by order of the Governor General in council to include munitions of war industries.

<sup>3</sup>Amended May 4, 1910.

which application was made for such reference and, while directing attention to violations and to disputes in which strikes or lockouts were not averted by reference to boards, have not been concerned in large measure with the question of illegal strikes and lockouts or the enforcement of the penal provisions. Nevertheless, our chief interest in the act as an experiment in government intervention is not in its administration as a conciliatory measure, but in the compulsory investigation and restrictive provisions of the act which serve to characterize it.

Upon this point several observers have expressed opinions. Sir George Askwith, Chief Industrial Commissioner of Great Britain, visited Canada during the latter part of 1912 for the purpose of inquiring into the working of the Industrial Disputes Investigation Act. Speaking of the suitability of the Canadian act to Great Britain and concluding his observations, Mr. Askwith says:

Where it (the Industrial Disputes Investigation Act) was frankly accepted as a means of preventing disputes it has worked extremely well, but where . . . its introduction has been resented, it has not succeeded to the same extent. In such latter cases where, by the imposition of penalties, efforts have been made to enforce the act the results have not been satisfactory.

The question then arises, What is the real value of the act, and can any points in the act be suitably adapted to this country? Is the restriction upon the right of proclaiming a lockout or strike so much of the essence of the act as to make the act of no effect if such restrictions were not compulsory? And do the penalties which are proposed to be enforced for breach of the restrictions of the act add to its value?

In my opinion the real value of the act does not lie in either of these propositions, and certainly not in the second. The pith of the act lies in permitting the parties and the public to obtain full knowledge of the real cause of the dispute and in causing suggestions to be made as impartially as possible on the basis of such knowledge for dealing with existing difficulties, whether a strike or lockout has commenced or not. This action on behalf of the public allows an element of calm judgment to be introduced into the dispute which at the time the parties themselves may be unable to exercise.

It is claimed, and the claim is backed up by statistics, that the restrictions upon a strike or lockout prior to such a judgment have been of great assistance in causing a calm discussion or investigation at an early date. If the power of giving such judgment had existed without the restrictions, and if the various trades affected had been



gradually educated to see the advantage of discussion prior to a dispute and had had the means by and through which such discussion could take place, it may be that practically similar results would have been obtained, without the difficulty of having a law, the complete enforcement of which is almost impracticable, and which, while it has been accepted in cases where education has existed, has been found very difficult in cases where the law is resented and joint consent has not been in being.<sup>1</sup>

Writing in 1910 for the United States Bureau of Labor Statistics and under the heading "Suggested Amendments," Dr. Victor S. Clark observes :

If men can strike with impunity in disregard of the law, what is the value of the latter in preventing or postponing strikes? Will the act not fall into abeyance except in those minor and less acute disputes where there is least call for government intervention? Has a law any force at all that operates only by the tolerance of the law-breakers? It should be recognized that expediency must constantly be consulted in administering such an act; but it would seem that the latter, though it may retain some residuary value as providing convenient machinery for public mediation, must lose its distinctive character and its interest as experimental legislation unless some way is discovered to secure the observance of the clauses deferring strikes and lockouts until after an investigation has been held. Unless these clauses are enforced, the law becomes an ordinary conciliation act, burdened by the discredit of its unenforced provisions.<sup>2</sup>

The same investigator in a paper before the Academy of Political Science in the city of New York, November 22, 1916, speaking of illegal strikes in Canadian industries, remarked that :

No effort has been made in the past to punish a large body of men for striking. This raises the question of the value of the penal provisions of the law. It is argued that if the act does not put strikers in jail and subject offending employers to heavy fines, these provisions are useless. But even though violations are seldom prosecuted, neither strikers nor employers dare defy the law of the land in disputes prominently before the public and affecting the prosperity and comfort of a large body of citizens. By doing so they

<sup>1</sup> Report to the Board of Trade (Great Britain) on the Industrial Disputes Investigation Act of Canada, 1907, by Sir George Askwith, K. C. B., K. C., Chief Industrial Commissioner, p. 15.

<sup>2</sup> "Canadian Industrial Disputes Investigation Act of 1907," by Victor S. Clark, Ph.D., U.S. Department of Commerce and Labor Bulletin No. 86, pp. 19, 20.

would put a powerful weapon in the hands of their opponents, and they would fatally prejudice their case in the high court of public opinion.<sup>1</sup>

Honorable F. A. Acland, Deputy Minister of Labor for Canada and Registrar of Boards of Conciliation and Investigation, writes :

Reference has been made to the strikes occurring in disputes which had been before boards and had not been adjusted. There has been also, in industries coming under the act, a considerable number of strikes in disputes which have not gone before a board for investigation. Work ceased in these cases without regard to the act. Many of the serious coal-mining strikes in western Canada during recent years have occurred in this way.

What, it may be asked, becomes of the penalties prescribed for these apparent infringements of the statute? The reply must be that such cases have seldom gone to the courts. It has not been the policy of the successive ministers under whose authority the statute has been administered to undertake the enforcement of these provisions. The parties concerned, or the local authorities, have laid information occasionally, and there have been in all eight or ten judicial decisions. The mining industry has been the chief delinquent in the matter of infringements, and there have been occasional derelictions on the part of the lower grades of transport or shipping labor; in the higher grades of railway labor the act has been well observed.<sup>2</sup>

#### DIFFICULTY OF MEASURING EFFECTIVENESS OF ACT

Before proceeding to an analysis of trade disputes occurring in industries within the scope of the act, or brought within its scope by the agreement of both parties to the dispute, it seems proper to point out that statistics do not furnish incontrovertible evidence of the success or failure of legislative measures to prevent or settle strikes or lockouts, and to state that the inquiry upon which this report is based was not made with the expectation of pronouncing upon the value of the Canadian act *in toto* as an instrument for the adjudication of labor disputes. To arrive at such a conclusion it would be necessary to resort to laboratory methods—to assume a

<sup>1</sup> Proceedings of the Academy of Political Science in the city of New York, Vol. VII, No. 1, pp. 15, 16.

<sup>2</sup> *Labor Gazette*, April, 1916, p. 1118. (Reprint from *Canadian Law Times* of March, 1916.)

static society upon which successive experiments might be tried under identical conditions and to devise a means of recording concretely human reactions to such experiments. It is axiomatic that social and economic conditions make for industrial peace or unrest irrespective of antistrike or lockout legislation. Any attempt, therefore, to compare, without correlation with other factors, the number of trade disputes resulting in strikes or lockouts during a period prior to the passage of measures for their adjustment with strikes and lockouts during a subsequent period is open to serious objection. Moreover, it is impossible to estimate the salutary effect of anti-strike or lockout legislation in making for voluntary negotiations and in preventing precipitate action whether or not the aid of such legislation is directly invoked. It is apparent that accelerating influences in some industries have served to discredit the value of the Canadian act, whereas in other industries retarding influences have tended measurably to decrease the number of strikes and lockouts and give undue credit to its restrictive provisions. Thus the growth of unionism in the coal-mining industry has led to concerted strike action for the establishment of union principles, approximately 50 per cent of the time lost in mining strikes during the period 1907-1916 occurring in strikes for union recognition, for the principle of the closed shop, or for the reinstatement of discharged union employees. In industries connected with the operation and maintenance of steam railways, on the other hand, unionism is more generally recognized and the principle of the working agreement more generally accepted. Measured solely by the number of strikes and lockouts, the number of employees affected, or the time lost, it is probable that any legislation would have evidenced merit in the prevention of railway strikes and failure in the prevention of mining strikes. It is idle to speculate as to how many strikes or lockouts might have occurred in Canadian industries since the inception of the Industrial Disputes Investigation Act had that act not been passed. It is incorrect to assume that every dispute referred under the act would have resulted in a strike or lockout but for such reference, even though a statutory declaration of intent to strike or lock out is required before a board can be created. Any analysis, therefore, must be made with a frank recognition that it is impossible to measure absolutely and concretely the results of social legislation.

Apart from the interpretation of strike and lockout statistics is the question of reliability of such information. It is safe to assume that, in point of number, fewer strikes and lockouts escape public attention subsequent to the inception of laws designed to prevent or settle such disputes than for a previous period. The benefits from such legislation may thus appear less than they really are because of a more complete record of labor disturbances.

Moreover, if the importance of disputes is to be measured, it is necessary to consider as well the number of employees affected and, if the dispute results in a strike or lockout, the time lost. Each of these considerations offers new difficulties. However honest in intent either side may be, it is natural for each to minimize the strength of the other and to magnify its own position. The questions of when a strike or lockout ends, how the time loss is to be measured, how to determine the number of employees directly affected for the purpose of computing such time loss, what consideration is to be given to employees indirectly affected (especially in sympathetic action and in declarations of intent to strike or lock out not resulting in such action), are pertinent to any statistical analysis of trade disputes and permit of wide latitude in interpretation.

So far as the employer is concerned, a strike is in being only if the operation of his establishment is seriously interrupted, and terminates when the operation is resumed; public recognition is most keen when the strike reflects itself in inconvenience to the public; whereas employees affected regard the strike as unsettled so long as their organization remains intact and they are not returned to their former positions. Conflicting reports as to the duration of a strike and the number of employees affected are therefore not unusual.

Undoubtedly the best index of the importance of a strike or lockout, apart from its immediate effect upon the public welfare, is the time loss. Remedial legislation, however, is most effective before a dispute reaches the acute stage of a strike or lockout, and obviously the importance of such legislation cannot be estimated by time loss averted in disputes settled without cessation of work. Furthermore, the time loss is at best but an approximate figure. It is usually determined by multiplying the number representing employees affected by the number of workdays' duration, but this may lead to grave

inaccuracy in cases where the plant is operated with a reduced force and the number of employees on strike varies from day to day.

Even greater inaccuracy arises in the use of figures representing employees indirectly affected. A threatened coal strike might conceivably affect indirectly every other industry in the country, and, by the same analysis, every strike must affect indirectly employees in other industries. If such employees are to be considered in an aggregate with employees directly affected, a definite rule must be followed which should exclude, as too problematical for consideration, those employees reported to be indirectly affected in contemplated strikes or lockouts and should include only those thrown out of work as a direct result of strike or lockout.

An additional difficulty is encountered when an attempt is made to harmonize a classification of disputes adopted prior to the enactment of antistrike or lockout legislation with the classification adopted or suggested by such legislation. Strikes and lockouts have been reported by the Canadian Department of Labor since 1901. In these reports the basis of classification is the industry, but no industrial group as thus reported comes wholly within the scope of the Industrial Disputes Investigation Act as interpreted by those administering it. Thus, mining and quarrying constitute one group in the monthly and annual summaries of trade disputes, but in the application of the act quarrying has been excluded from its restrictive provisions. Metal and shipbuilding trades constitute a group which would be entirely without the scope of the act but for the inclusion of electrical workers, linemen, and ship repairmen. Under the group "General Transport" are included street-railway employees, shipping employees, steam-railway employees, and teamsters. Teamsters have been considered as within the scope of the act, however, only when their work is connected with the handling of freight at terminals. The group "Unskilled Labor," while mainly outside the restrictive provisions of the act, may contain laborers who, by virtue of the work performed in connection with certain public utilities, belong properly within the scope of the act. Moreover, the Industrial Disputes Investigation Act is not applicable to disputes involving fewer than 10 employees, whereas strikes and lockouts are reported in all cases where 6 or more employees are involved. On the other hand, the applicability of the act is not determined by the duration of the

strike or lockout, whereas it is a rule of the Canadian Department of Labor not to report strikes or lockouts of less duration than twenty-four hours.

### SCOPE OF ACT

Obviously any attempt to measure the effectiveness of the Canadian act must be preceded by a consideration of the scope of the act. In the absence, however, of any interpretation having the force of a legal opinion, it is impossible to establish an inflexible rule of action.

To the extent that the act is administered as a conciliatory and not as a coercive measure, it would obviously be unwise for officials to pronounce upon the legality of strikes and lockouts not coming before a board, lest the circumstances surrounding subsequent similar disputes necessitate a reversal of opinion.

It is recognized, too, that if doubt exists as to the enforceability of provisions, the measure containing them is often more useful if purposely indefinite and if discretion is permitted in its application. Conversely, if discretion is permitted, the question of expediency plays so important a rôle that anticipation of action might serve to defeat its purpose.

If, on the other hand, an effort is being made to administer the act strictly as a compulsory measure, an admission of illegality must necessarily reflect upon the enforceability of the provisions of the act or upon its administration. In either case subsequent application of the provisions would be more difficult.

The safest course, no doubt, and the one taken in the analysis presented later, is to assume that when the Minister of Labor constitutes a board of conciliation and investigation upon the application of one party to a dispute it amounts to a decision that the act applies to that class of disputes. Such action by the Minister of Labor, however, does not constitute a precedent which either he or subsequent ministers are bound to follow, nor does it in any way limit the right of either party to apply for an injunction seeking to restrain a board from proceeding, on the ground that the act does not apply to a particular dispute.

The act applies to "disputes in mining property, agency of transportation or communication or public service utility including

. . . railways, whether operated by steam, electricity, or other motive power, steamships, telegraph and telephone lines, gas, electric light, water and power works" involving ten or more employees in skilled or unskilled manual or clerical work. It should be noted, too, that the act applies only to disputes in which the controversy has reached a stage such that, "failing an adjustment of the dispute or a reference thereof by the minister to a board, . . . a lockout or strike will be declared . . . and that the necessary authority to declare such lockout or strike has been obtained." It is provided further that the violation of privileges, rights, and duties of employers or employees does not constitute a dispute in the meaning of the act if such violation is in itself an indictable offense. Subject to these limitations and to the provision that for disputes in industries not specified in the act both parties must concur in the application, it is possible for disputes in all industries to be referred for adjustment, but in this respect the act is simply a conciliatory measure with provision for voluntary arbitration.

From the circumstances surrounding the inception of the act—a prolonged coal strike—it might be inferred that the term "mining" had reference to coal mines. Boards have been created, however, for metal miners, and asbestos miners have been considered within the scope of the act. "Transportation" permits of greater latitude in interpretation, but it is not clear whether the phrase "agency of transportation" is intended to be defined as "railways . . . operated by steam, electricity, or other motive power," or whether the inclusion of specific means excludes other means. Thus far it seems to have been the policy of the department to include without question the operation and maintenance of steam, electric, and water transportation agencies serving as public carriers. Teamsters have been considered as a transportation agency, as previously stated, when their work is intimately connected with the handling of freight at the ends of transportation lines. The same reasoning, however, would lead to the inclusion of transfer companies carrying passengers and baggage and might conceivably embrace the employees of any concern doing general transfer work for the public whether by team, motor truck, or taxicab. The maintenance of such transfer agencies would undoubtedly bring within the scope of the act industries not contemplated by those who framed it, yet the relation

of a blacksmith shop, a harness shop, a public garage, a paving crew, or a road gang to certain forms of public transportation is somewhat similar to the relation which a roundhouse, a railway machine shop, or a section gang—in which latter industries the act has been held to be applicable—bears to steam railways. The construction of transportation facilities has been excluded in the application of the act, but it is sometimes difficult to determine where maintenance leaves off and construction begins.

Somewhat more indefinite is the expression "industries connected with public utilities." The term public utility has not received legal interpretation in Canada and admits of a large measure of discretion in its use. In Australasian states public utilities include the supply and distribution of electricity for light or power; gas for lighting, cooking, or industrial purposes; water for domestic purposes; the supply of milk and the slaughtering or supply of meat for domestic consumption; the production or distribution of any article of food the deprivation of which might tend to endanger human life or cause serious bodily injury; the working of any ferry, tramway, or railway used for the public carriage of goods or passengers; and the production and distribution of coal. In the application of the Canadian act occupations connected with the supply and distribution of gas, electricity, and water for domestic consumption are admittedly within the scope of the act, though the guiding principle of the relation to the public welfare might conceivably bring other industries within the list of public utilities.

#### METHOD OF REFERRING DISPUTES UNDER THE ACT

As stated previously, the act denies the right to strike or lock out in certain industries until the matters in dispute have been investigated and reported on by a board of conciliation and investigation appointed by the Minister of Labor. It is provided, however, that the initiative in such an investigation must be taken by one of the parties to the dispute. That is, before a board can be appointed either employer or employees must make formal request for an investigation. If the dispute occurs in an industry not within the scope of the restrictive provisions of the act, employer and employees must concur in the request before a board can be appointed. After



the application has been made in accordance with the provisions of the act, it rests with the Minister of Labor whether a board shall be appointed.

The act provides that the board shall consist of three members, one "appointed on the recommendation of the employer, and one on the recommendation of the employees (the parties to the dispute), and the third on the recommendation of the members so chosen." In case of failure by either party to recommend within prescribed time limits, the minister appoints without such recommendation. If the two members first appointed fail to agree upon a recommendation for the third member within prescribed time limits, the minister selects the third member. The appointment of the third member completes the board.

There are thus three distinct steps involved before a dispute is referred under the act: (1) an application for reference; (2) a decision by the minister to constitute a board of conciliation and investigation; and (3) the appointment of such a board. It is important to keep these distinctions in mind, because some applications for reference do not receive favorable consideration and some boards are not constituted even after the Minister of Labor has decided in favor of such action.

In its publications of proceedings under the act the Canadian Department of Labor does not report applications for reference in which (1) a board was refused; (2) a settlement was effected before action was taken by the Department of Labor looking to the establishment of a board; or (3) the department was unable to act owing to the refusal of one party to concur in the application.

### CLASSIFICATION OF DISPUTES

Disputes occurring in industries within the scope of the act may be divided broadly into two groups: strikes and lockouts, and disputes not resulting in strikes or lockouts but in which statutory declaration of intent to take such action was made. It is apparent that the disputes in the second group are identical with disputes not resulting in strikes or lockouts referred under the act or, as explained in a previous section, in which application was made for reference and action taken by the Department of Labor contemplating the

establishment of boards of conciliation and investigation. Obviously there have been disputes in industries within the scope of the act adjusted without the occurrence of a strike or a lockout and without application for reference but which may not be included in this group because technically they are not within the scope of the act until an application for reference has been legally made.

The second group, then, of disputes within the scope of the act is made up of disputes not resulting in strike or lockout which are within the scope of the act by virtue of an application for reference made in compliance with the provisions of the act and in which it was the intent of the department to create a board.

In the proceedings under the act disputes may also be divided into strikes and lockouts, and disputes not resulting in strikes or lockouts. Both groups are restricted to disputes in which (1) boards were constituted within the meaning of the act or (2) application was made for reference and action taken by the Department of Labor contemplating the establishment of a board. Each group may thus include disputes in which boards were not constituted. However, by ruling of the Canadian Department of Labor, all applications for reference in which steps have been taken by the department toward the establishment of a board are reported in the official proceedings under the act. In both groups also a statutory declaration of intent to strike or lock out was made, but in some disputes the strike or lockout occurred before application was made for reference under the act and the declaration of intent was thus only a perfunctory procedure.

Considering only the intent of the act, which is to avoid interruption to industry, any strike or lockout occurring in industries within its scope indicates a failure of the act. Whether this failure occurs in spite of a strict observance of the restrictive provisions of the act or is marked by an attitude of indifference toward, or open defiance of, such provisions, or by a lack of confidence in boards of conciliation and investigation, is best shown by the time of occurrence of strikes and lockouts. Thus, strikes and lockouts occurring after boards of conciliation and investigation have been given opportunity to adjust the points in controversy indicate the greater failure, although the parties involved in such strikes and lockouts are strictly law-abiding in the sense that they observe the restrictive provisions

of the act. Strikes and lockouts commencing prior to an application for reference, but terminating before a board has been legally constituted, may indicate ignorance of the act or its applicability to particular disputes. Although such strikes or lockouts are illegal, the offense is palliated somewhat, since after the act was recognized in a formal application for reference the disputants became law-abiding, the matters in dispute being held in abeyance pending an investigation. Strikes and lockouts commencing prior to an application for a board and continuing after the board is constituted indicate either that the dispute was referred contrary to the wishes of one of the disputants or that, while willing to accept the services of a board, one or the other was unwilling to yield the right to strike or lock out and did not regard the penal provisions seriously. Strikes and lockouts commencing after the application for a board but before the investigation is completed may be protests against delay in constituting the board or in completing the investigation, or may indicate a lack of confidence in the board. In either case a disregard for the penal provisions is shown.

It has seemed desirable to make a distinct group of strikes and lockouts occurring in industries within the scope of the act without any attempt's being made to invoke its aid. It is the practice of the Canadian Department of Labor when an illegal strike or lockout occurs or is imminent to bring such illegality to the attention of the disputants and explain the purpose of the act. This group indicates an open defiance of the penal provisions in that neither party was willing to make application for a board of conciliation and investigation.<sup>1</sup>

## COMPARISON OF DISPUTES IN INDUSTRIES WITHIN THE SCOPE OF, AND IN PROCEEDINGS UNDER, THE ACT

### ALL DISPUTES

During the period March 22, 1907, to December 31, 1916, there have occurred in industries within the scope of the act 222 disputes resulting in strikes and lockouts, affecting 100,608 employees, whose

<sup>1</sup>In a few instances application was made for reference but no steps were taken by the department looking to the establishment of a board, and the cases are not officially reported as applications for reference.

time loss was 4,838,647 working-days. In 44 of these, involving 44,086 employees and a time loss of 3,665,969 days, application was made for reference under the act. Of this number, 18 disputes, affecting 20,330 employees and occasioning a time loss of 1,822,803 days, did not result in strikes or lockouts until after the investigation and report of a board and consequently were legal. Thus there have been 204 illegal strikes and lockouts, affecting 80,278 employees, whose time loss was 3,015,844 days. Of this number, 178 disputes, involving 56,522 employees and a time loss of 1,172,678 days, occurred without either party to the dispute seeking to invoke the aid of the act.

A further analysis of the strikes and lockouts in which application was made for reference under the act shows that 9 strikes, involving 4606 employees and a time loss of 38,070 days, began prior to the application for a board but were called off prior to the completion of the board, the matter in dispute being held in abeyance pending an investigation; 5 strikes, affecting 3950 employees, whose time loss was 46,650 days, began prior to the application for a board and were adjusted before a board was constituted; 5 strikes, affecting 11,034 employees, whose time loss was 1,623,456 days, began prior to the application for a board and continued after the board was constituted; 7 strikes, affecting 4166 employees and resulting in a time loss of 134,990 days, began after the application for a board but before its report.

In addition to the 44 strikes and lockouts in the adjudication of which the act was invoked, 173 disputes, affecting 141,295 employees, not resulting in strike or lockout but in which statutory declaration of intent to take such action was made, were referred to boards of conciliation and investigation under the act, or application was made for such reference and action taken by the Department of Labor contemplating the establishment of such a board. In 36 of these disputes, affecting 34,145 employees, a settlement was reported before a board was constituted; in 137 disputes, affecting 107,150 employees, boards were constituted. How many of these 137 disputes would have resulted in strikes or lockouts but for reference under the act is problematical. It will be interesting, however, to examine those disputes in which application was made for reference, such application being accompanied by the statutory declaration that,

failing an adjustment or a reference, a strike or lockout would result, but for which boards were not constituted.

Of applications in which boards are not constituted only those are reported in the official proceedings in which action is taken by the Department of Labor looking to the establishment of a board. Of the disputes thus reported, reference has been made to 5 strikes, affecting 3950 employees, and to 36 disputes not resulting in strike or lockout, affecting 34,145 employees, in which boards were not constituted. Of the five strikes, all began prior to the application for boards and could not have been precipitated by a failure of reference. Of applications in disputes not reported in the proceedings under the act, 14 disputes, affecting 8247 employees, were in industries not within the scope of the act and for which the department was unable to grant boards owing to the lack of concurrence of both parties to the disputes. Of these 14 disputes, 6 disputes, affecting 6465 employees, resulted in strikes prior to the applications for boards, and the inability of the department to apply the act could not be advanced as a reason for the strikes; 1 strike, affecting 96 employees, commenced the same day the application was received, but presumably not until the other party to the dispute had refused to concur in the request for a board.

Summarizing the figures of the preceding paragraph, it will be observed that there were 55 disputes, affecting 46,342 employees, in which application was made for reference but in which boards were not constituted.<sup>1</sup> In 11 of these disputes, affecting 10,415 employees, a strike occurred prior to the application for reference. In 44 disputes, affecting 35,927 employees, a strike or lockout did not occur prior to the application for reference, and of these, 43, or 97.7 per cent of the disputes, affecting 35,833, or 99.7 per cent, of the employees, were adjusted without the occurrence of a strike or lockout. It is recognized, however, that the formal action of applying for a board may in itself make for a resumption of negotiations between the parties to a dispute and, too, that after the application is received the department is in a favorable position to serve as a conciliatory

<sup>1</sup> Other applications for reference, not reported officially, in which boards were refused for technical or other reasons, or in which settlements were effected before action was taken by the department, are not considered in this analysis.

or mediatory agency and may aid in securing a settlement before a board is completed. It is recognized, too, that disputes settled without the occurrence of a strike or lockout and without reference to boards may not have presented the same degree of difficulty in adjustment as disputes referred to boards. To the extent, however, that the statutory declaration of intent to strike or lock out indicates the seriousness of the controversy, all disputes are on a parity. Measured thus, it is apparent that of the 137 disputes referred to boards and not resulting in strike or lockout a considerable number would have been adjusted without the occurrence of strikes or lockouts even though not referred to boards.

Viewed strictly as a conciliatory measure, the usefulness of the act should be reflected in the applications for reference under Section 63, whereby the concurrence of both disputants is necessary in disputes outside specified industries before a board can be created. There was a total of 26 applications under Section 63, in disputes affecting 13,781 employees. In 12 disputes, affecting 5534 employees, boards were constituted; in 14 disputes, affecting 8247 employees, the department was unable to act, owing, as previously stated, to the absence of joint consent of the disputants. During the same period there occurred a total of 691 strikes and lockouts, affecting 149,812 employees, whose time loss was 3,254,332 working-days, in industries not within the scope of the act but which might have been brought within its scope by agreement of both parties to the disputes.

### MINING

An analysis of mining disputes for the period under consideration shows that 75 strikes or lockouts occurred, affecting 59,304 employees and occasioning a time loss of 3,973,381 days. Of this number, 50 strikes, affecting 33,775 employees, whose time loss was 967,780 days, occurred without reference to the act, and 25 strikes, affecting 25,529 employees, whose time loss was 3,005,601 days, were referred under the act or application was made for reference. Of the strikes referred under the act, 4, affecting 1591 employees, whose time loss was 21,525 days, occurred prior to application for reference but terminated prior to the completion of a board and pending its investigation and report; 4 strikes, affecting 10,034 employees, whose time loss was 1,585,456 days, commenced prior to an

application for a board and continued after the board was constituted; 5 strikes, affecting 3825 employees and occasioning a time loss of 69,785 days, commenced after the application for a board but before its report; 10 strikes, affecting 8229 employees, whose time loss was 1,316,085 days, commenced after the investigation and report of a board; in 2 strikes, affecting 1850 employees, whose time loss was 12,750 days, a board was applied for but not completed. Of the disputes not resulting in strike or lockout referred under the act, or in which application was made for reference and action taken by the Department of Labor contemplating the establishment of a board, 34 disputes, affecting 24,670 employees, were mining disputes. In 5 of these disputes, affecting 2860 employees, a settlement was effected before boards were completed.

#### RAILWAYS

A similar analysis of disputes connected with the operation and maintenance of steam railways shows that 62 strikes or lockouts occurred, affecting 24,187 employees and occasioning a time loss of 724,134 days. Of this number 50 strikes, affecting 9016 employees, whose time loss was 90,970 days, were not referred under the act, whereas 12 strikes, affecting 15,171 employees, whose time loss was 633,164 days, were referred under the act. Of the strikes referred under the act, or in which application was made for reference, 3, affecting 1155 employees, whose time loss was 5085 days, commenced prior to application for reference but terminated prior to the completion of a board and pending its investigation and report; 1 strike, affecting 1000 employees, whose time loss was 38,000 days, commenced prior to application for a board and continued after the board was constituted; 2 strikes, affecting 341 employees, whose time loss was 65,205 days, commenced after the application for a board but before its report; 5 strikes, affecting 11,275 employees, whose time loss was 496,874 days, commenced after the investigation and report of a board; in 1 strike, affecting 1400 employees, whose time loss was 28,000 days, a board was applied for but not constituted. Of the disputes not resulting in strike or lockout in which application was made for reference, 76, affecting 93,200 employees, were railway disputes. Of this number, 23 disputes, affecting 29,843 employees, were adjusted before a board was constituted.

## OPERATION OF ACT AS BETWEEN SUCCESSIVE PERIODS

The period March 22, 1907, to December 31, 1916, may be conveniently divided into two periods of approximately five years each. Whether there were fewer or more disputes resulting in strike or lock-out, or in which the intent to take such action was declared, in one period than in the other is not in itself conclusive. It might be expected, however, that greater familiarity with the purpose, scope, and operation of the act would lead to its application in a greater percentage of disputes arising in industries within its scope. It might also be expected that with the greater undesirability of interruption to industry arising out of participation in the European conflict the relative importance of a governmental agency for the adjudication of labor disputes would be augmented. It should be fruitful, therefore, to compare the periods 1907-1911 and 1912-1916 as to the ratio of disputes referred and disputes within the scope of the Industrial Disputes Investigation Act.

During the period March 22, 1907, to December 31, 1911, there were 118 strikes and lockouts, affecting 62,344 employees, whose time loss was 3,620,346 working-days, in industries within the scope of the act. For the same period there were 92 statutory declarations of intent to strike or lock out, involving 70,175 employees, but in which such strike or lockout did not occur. During the period January 1, 1912, to December 31, 1916, there were 104 strikes and lockouts, affecting 38,264 employees and occasioning a time loss of 1,218,301 working-days, and 81 statutory declarations of intent to strike or lock out not resulting in such action, affecting 71,120 employees, in industries within the scope of the act.

In the mining industry during the period March 22, 1907, to December 31, 1911, there were 46 strikes and lockouts, affecting 36,028 employees, whose time loss was 2,906,859 working-days. For the same period there were 27 statutory declarations of intent to strike, involving 20,440 employees, but in which such strike or lockout did not occur. During the period January 1, 1912, to December 31, 1916, there were 29 strikes and lockouts, affecting 23,276 employees and occasioning a time loss of 1,066,522 working-days, and 7 statutory declarations of intent to strike or lock out not resulting in such action, affecting 4230 employees.



In the operation of railways during the first period there were 30 strikes and lockouts, affecting 17,339 employees, whose time loss was 640,035<sup>1</sup> working-days, and 44 statutory declarations of intent to strike or lock out not resulting in such action, affecting 40,852 employees. During the second period there were 32 strikes and lockouts, affecting 6848 employees, whose time loss was 84,099 working-days, and 32 statutory declarations of intent to strike or lock out, involving 52,348 employees, but in which such strike or lockout did not occur.

On the basis of the above it would appear that the act was successful in avoiding unrest in that fewer disputes occurred during the second five years of operation than during the first five years. As stated previously, however, there is no way of determining how many disputes might have occurred but for the operation of the act. A better measure of effectiveness will be found in the relative proportion of disputes within the scope of the act to disputes referred under the act during the two periods.

From the inception of the act until December 31, 1911, boards were constituted for 22.9 per cent of strikes and lockouts in industries within the scope of the act, for 56.5 per cent of the employees affected, and for 93.7 per cent of the working-days lost in such strikes and lockouts, as against 11.5 per cent of the strikes and lockouts, 12.9 per cent of the employees affected, and 18.5 per cent of the working-days lost during the period January 1, 1912, to December 31, 1916. Of statutory declarations of intent to strike or lock out in industries within the scope of the act, boards were constituted for 36.2 per cent of the disputes and for 45.8 per cent of employees affected during the first period as against 33 per cent of the disputes and 42.5 per cent of the employees affected during the second period. Of all disputes within the scope of the act, boards were constituted for 49.1 per cent during the first period and for 39.5 per cent during the second period. Of all employees affected in disputes within the scope of the act, boards were constituted for 72.4 per cent during the first period as against 47 per cent during the second period. Relatively, then, a much smaller percentage of disputes within the scope of the act were referred to boards during the period 1912-1916 than during the period 1907-1911.

<sup>1</sup> Including 44,000 days lost in 1912 on account of a strike which began and was referred under the act prior to 1912.

A similar analysis of disputes in the mining industry shows that of all mining disputes, boards were constituted for 56.2 per cent during the first period as against 30.5 per cent during the second period, and for 69.2 per cent of the employees affected as against 23.3 per cent. If only strikes and lockouts are considered, the per cent is 39.1 as against 17.2 for such strikes and lockouts; 57.5 as against 8.3 for employees affected; and 96.8 as against 16.8 for working-days lost.

The act is conceded to have been most successful in its application to railway disputes, yet boards were constituted for 55.3 per cent of the railway disputes during the first period as against 36 per cent during the second period, and for 78.9 per cent of the employees affected as against 52.7 per cent. Of all railway strikes and lockouts, boards were constituted for 23.4 per cent during the period 1907-1911 as against 12.5 per cent during the period 1912-1916; for 71.2 per cent of the employees affected as against 20.7 per cent; and for 87.7 per cent of the working-days lost as against 51.8 per cent.

### VIOLATIONS OF THE ACT

The act provides that in designated industries "It shall be unlawful for any employer to declare or cause a lockout, or for any employee to go on strike on account of any dispute prior to or during a reference of such dispute to a board of conciliation and investigation . . ." <sup>1</sup>; that "Any employer declaring or causing a lockout contrary to the provisions of this act shall be liable to a fine of not less than \$100 nor more than \$1000 for each day or part of a day that such lockout exists" <sup>2</sup>; that "Any employee who goes on strike contrary to the provisions of this act shall be liable to a fine of not less than \$10 nor more than \$50 for each day or part of a day that such employee is on strike" <sup>3</sup>; and that "Any person who incites, encourages, or aids in any manner any employer to declare or continue a lockout or any employee to go or continue on strike contrary to the provisions of this act shall be guilty of an offense and liable to a fine of not less than \$50 nor more than \$1000." <sup>4</sup>

<sup>1</sup> Canadian Industrial Disputes Act, Section 56.

<sup>2</sup> *Ibid.* Section 58.

<sup>3</sup> *Ibid.* Section 59.

<sup>4</sup> *Ibid.* Section 60.

It is impossible to measure the influence of the penal provisions in restraining employers and employees from illegally interrupting industry, or others from inciting such action. A comparison, however, of violations with prosecutions will indicate the attempt made to enforce these provisions and the importance attached to them.

During the period March 22, 1907, to December 31, 1916, as stated previously, there were 204 illegal strikes and lockouts, affecting 80,278 employees, whose time loss was 3,015,844 working-days. Of these 204 strikes or lockouts, 65, affecting 51,075 employees and occasioning a time loss of 2,657,296 working-days, were in mining, and 57, affecting 12,912 employees, whose time loss was 227,260 days, were in railways.

Expressed as percentages, it will be observed that of all strikes and lockouts in industries within the scope of the act, 91.9 per cent of such strikes and lockouts, affecting 79.8 per cent of the employees and occasioning 62.3 per cent of the time loss, were illegal. Mining contributed 31.9 per cent of the illegal strikes and lockouts, 63.6 per cent of the employees affected, and 88.1 per cent of the working-days lost in illegal strikes and lockouts. Railways contributed 25.6 per cent of the illegal strikes and lockouts, 12.8 per cent of the employees affected, and 4.7 per cent of the working time lost in illegal strikes and lockouts. Of all mining strikes, 86.7 per cent, affecting 86.1 per cent of striking miners and occasioning 66.9 per cent of the time lost in mining, were illegal. Of all railway strikes, 91.9 per cent, affecting 53.4 per cent of striking railway employees and occasioning 31.4 per cent of the time lost in railways, were illegal.

Of the total number of illegal strikes and lockouts, 2 disputes, affecting 95 employees, whose time loss was 390 days, must be considered lockouts. Assuming the minimum penalty, it will be observed that the aggregate of penalties which might have been imposed exceeds \$30,000,000. If the maximum penalty is assumed, the amount exceeds \$150,000,000. This does not take account of the violations of Section 60 in inciting to illegal strikes, although it is probable that in every illegal strike there are violations of this section.

A comparison of illegal strikes and lockouts for the periods March 22, 1907, to December 31, 1911, and January 1, 1912, to December 31, 1916, shows that for the first period 90.7 per cent of the strikes and lockouts occurring in industries within the scope of the act

were illegal, as against 93.3 per cent during the second period. The employees affected in illegal strikes and lockouts constituted 71.2 per cent of employees affected in all strikes and lockouts in industries within the scope of the act during the first period, as against 93.7 per cent during the second period. The working-days lost in illegal strikes and lockouts during the first period was 53.7 per cent of the time lost in strikes and lockouts in all industries within the scope of the act, as against 86.8 per cent in the second period. A similar analysis for mining shows that of all mining strikes and lockouts during the first period, 84.8 per cent of such strikes and lockouts, affecting 82 per cent of the employees and occasioning 60.2 per cent of the time loss, were illegal, as against 89.7 per cent of mining strikes and lockouts, affecting 92.5 per cent of the employees and occasioning 85.1 per cent of the time loss, during the second period. In railways, 90 per cent of the strikes and lockouts, affecting 37.2 per cent of the employees and occasioning 17.5 per cent of the time loss, were illegal during the first period, as against 93.7 per cent of the strikes and lockouts, affecting 94.5 per cent of the employees and occasioning 95.8 per cent of the time loss, during the second period.

#### PROSECUTIONS UNDER THE ACT

During the period March 22, 1907, to December 31, 1916, there were 11 prosecutions for alleged violations of the act. Of these, 1 was to test the constitutionality of the act and to restrain a board of conciliation and investigation from proceeding; 1 was to enforce an agreement entered into as a consequence of the recommendations of a board; 7 were prosecutions for illegal strikes or for inciting such action; 2 were for illegal lockouts. In all, charges have been laid against 9 employees for violating the provisions of Section 60 by the encouragement of strikes and against 11 employees for violating the provisions of Section 56 by going on strike illegally. Charges have been laid against 3 employers for violating the provisions of Section 56 by illegal lockouts. In the case of 11 employees the charge was either dismissed or withdrawn; in the case of 9 employees the charge was sustained. Charges against 2 employers were sustained; charges against 1 employer were dismissed. The aggregate of fines imposed, exclusive of costs, was \$1660.

## CONCLUSION

It may be repeated that the chief interest in the Canadian Industrial Disputes Investigation Act is not in its administration as a conciliatory measure but in those restrictive provisions which have served to characterize it as the Compulsory Investigation Act. It is clear that the provisions have not been enforced; that continued administration of the act has been accompanied by an increase in the percentage of illegal strikes and lockouts and by a decrease in the percentage of disputes within the scope of the act in which the act was applied. The question naturally arises as to the value of the restrictive provisions if they are not enforced. The answer to this must be sought in the spirit of the act, its administration, and its violation.

Obviously, the restrictive provisions of the act were intended to avoid interruption to industries intimately related to the public well-being. True, the ultimate right to strike or lock out was not denied, and in this respect the act may be said to recognize such right subject to limitations and thus to differ from legislation that prohibits absolutely the right to strike or lock out. In underlying principle, however, there is little difference. Both are predicated on the principle that private rights cease when they become public wrongs. Although the wrong is undoubtedly greater when it results from ill-advised or precipitate interruption to industries whose continuous operation is vital to public welfare, it is not clear that the wrong would be wholly lacking even though a strike or lockout did not occur in these industries until such action was legally permissible.

The act was written after a prolonged coal strike had seriously interfered with public well-being and had focused attention upon the dangers of a prolonged industrial warfare in this and other industries in which the public is largely concerned. It was written by a Parliament in which the conservative element predominated. The previous experience in Canada with the Conciliation and Labor Act and with the Railway Labor Disputes Act and the experience in other countries, particularly Australia, undoubtedly exercised no little influence in determining the character of the act of 1907.

Experience in Australia had shown that absolute prohibition of strikes and lockouts was difficult to enforce. It is probable that the

framers of the Canadian act recognized this and sought to avoid the difficulty by limiting the act to industries in which the public had an immediate interest and by imposing in these industries only temporary restriction, that the full force of public opinion might be brought to bear upon precipitate action.

Certain other provisions indicate that the Australian experience was in mind. Thus the Canadian act provides that only those disputes may come before a board in which, "failing an adjustment of the dispute or a reference thereof by the minister to a board, . . . a lockout or strike will be declared . . . and that the necessary authority to declare such lockout or strike has been obtained." The purpose of these provisions was, on the one hand, to prevent a multiplicity of trivial cases' clogging the administrative machinery and perhaps giving a serious aspect to disputes capable of self-adjustment and, on the other hand,—recalling that the act was written by a conservative Parliament in which the working classes had little representation,—to limit the encouragement to organization arising inevitably from government arbitration.

On the first of these points—restricting the application of the act to the more serious disputes—it may be remarked that the required statutory declaration of intent to strike or lock out may come to be merely perfunctory. If authority to declare a strike or lockout is necessary before a dispute may be referred under the act, it is apparent that the granting of such authority may be looked upon simply as a formality. It has been shown elsewhere in this report that a considerable number of such declarations did not result in strike or lockout, even though boards were not created.

On the second point—limiting government encouragement of organization—little can be said in its support without attacking the principle of government intervention and denying the value of labor organization. Certainly a board of investigation or arbitration must deal with representatives of employees, and this in itself implies collective action through organization. During the proceedings before such a board it is often necessary that employers meet and discuss differences with representatives of labor. But while compulsory investigation or arbitration makes organization of employees necessary and leads indirectly to the recognition of officials of these organizations by employers, it tends, in some cases at least, toward

the establishment of more cordial relations between employers and union officials and the forming of the habit of negotiation which may conceivably increase the number of self-adjustments. To limit the scope of government intervention on the ground that it encourages the growth of unions is, after all, but to deny the right of men to organize and to deal collectively.

One other feature of the act should be mentioned because of its effect upon the administration of the act. No permanent board of conciliation and investigation is provided. For each dispute a new board is created. Upon filing its report with the Minister of Labor the board ceases to exist. This lack of a permanent board undoubtedly has advantages and disadvantages. It avoids the lasting discredit of an unsatisfactory decision. If, in the opinion of either side, one board fails, there is always the chance of a better deal next time with a different board. Moreover, there is a feeling of direct representation of interests when each side to a dispute has the opportunity of naming a member of the board. On the other hand, however, there is always more or less delay in creating and assembling a board and for the board to get acquainted with the routine of procedure. Many disputes are of such a nature that only quick action will avert a strike or lockout. This is possible only with a permanent body ready for action. Then, too, conciliation calls for a large degree of skill in dealing with industrial disputes. A temporary board cannot be expected to handle disputants as tactfully as a permanent and more experienced board.

The absence of a permanent board gives rise to another disadvantage in attempting to carry out a decision. It is seldom that a wage award or a set of working conditions can be put into effect without numerous questions' coming up respecting interpretation. Charges of deliberate violation of the terms of the agreement are often made and delays in securing official interpretation may aggravate the situation to a point where a strike or lockout occurs even though the parties have previously signified a willingness to accept the decision. In this it must be borne in mind that the decisions of Canadian boards of investigation are not binding upon the parties to the disputes, and it is therefore necessary to secure compliance through the pressure of public opinion or by leading the parties themselves to believe in the fairness of the decision.

Labor's attitude toward any limitation of the right to strike is well-known. Strikes are opportunistic and are looked upon as born of necessity. If the right to strike or to strike at an opportune time is taken away, then labor must be assured that its just demands will be met in some other way. Labor is not ready, however, to leave wages and working conditions entirely in the hands of government boards of arbitration. Although not opposed to compulsory investigation, labor objects to the provisions in the Canadian act that restrict the right to strike. There is some justification for this attitude. The absence of any well-defined and acceptable standards to be used in wage determination has forced arbitrators to resort in many cases to the expediency of "splitting the difference" or of giving the parties what they are most likely to accept without a strike or a lockout. As a consequence the workers feel that they are confronted with the same proposition in arbitration as in direct negotiations with their employers and must not only "ask enough to make it worth while to arbitrate" but perhaps in the end rely upon their own strength. The dissatisfaction with arbitration is always aggravated by delays in securing decisions or compliance therewith, during which time the employer can prepare for a strike and much of the effectiveness of precipitate action is lost. Thus while some of the illegal strikes in Canadian industries have undoubtedly been due to ignorance or carelessness, the greater number have occurred because the workers felt that an opportune strike was the most effective way of securing their demands.

A restriction upon the right to strike or lock out pending an investigation by a government board as provided in the Canadian act is generally favored by employers because it enables them to continue operation and to prepare for the possible contingency of a strike and does not force them to accept the findings of such a board. If the form of such legislation is changed to a compulsory acceptance of findings, employers are as apt as employees to take exception to adverse decisions. Employers are seldom violators of the Canadian act in the sense of declaring an illegal lockout. For that matter a lockout at any time is exceedingly rare. But it should be borne in mind that the distinction between a strike and a lockout is not clear-cut. By a refusal to meet demands or to accept the findings of a legally constituted government board the employer may impose



conditions which, though resulting in a strike, nevertheless constitute a lockout as effectually as though the doors of his establishment were closed against his employees.

In any antistrike or lockout legislation it is necessary with both employers and employees to meet the objection to what is regarded as a curtailment of rights and privileges. Employers have the advantage in that they have been subject to a greater amount of governmental regulation than have workers. But if either employers or employees are to be brought to the point of voluntarily accepting arbitration as a substitute for direct action, there must be some assurance that the underlying principle of arbitration is not merely a restatement of the law of supply and demand, which in the final analysis concedes the demands of the stronger party.

Much has been written of the emphasis placed upon public opinion in averting strikes and lockouts and in bringing about compliance with decisions. Because of the provision in the Canadian act that the proceedings and findings of boards of conciliation and investigation shall be made public, the act has been jestingly called the "parade law." There is much to be said, however, in favor of an enlightened public opinion in dealing with industrial disputes. The contending parties are much more apt to be temperate in their attitude if they know that the public is to be kept informed about the dispute. This in itself will tend to avoid precipitate action and unreasonable demands and, irrespective of their relative strength, will incline the parties toward the acceptance of a compromise that approaches a fair settlement. In the absence of practical means of government enforcement public opinion will go a long way toward making restrictive legislation effective. That the public has viewed repeated violations of the restrictive provisions of the Canadian act with little concern, however, discredits the conclusion that those who observe the provisions do so because they fear the public will condemn infringements *per se*. Public interest is most keen when inconvenience is threatened or occasioned, and it is unlikely that a public would view complacently a strike or lockout, whether legal or illegal, that proved to be an actual menace to any large number of people.

In the administration of the Canadian act emphasis has been placed upon conciliation and mediation rather than upon compulsion. The Department of Labor endeavors to keep in touch with industrial

controversies, to warn disputants of the penalties provided for illegal strikes and lockouts, and to encourage a continuance or a resumption of negotiations or an application for reference under the act. No one, it may be observed, is specifically charged with enforcing the restrictive provisions, and it rests with the parties themselves or with the public to prefer charges.

With reference to violations of the restrictive provisions the Deputy Minister of Labor has previously been quoted as saying that "It has not been the policy of the successive ministers under whose authority the statute has been administered to undertake the enforcement of these provisions."<sup>1</sup> In his opinion, "The usefulness of the act is better determined, in any event, less by the negative results in situations where the parties have, regardless of consequences, stayed deliberately aloof from its influences and operation than by the positive results obtained in situations where the parties concerned have, whether cordially or reluctantly, brought their differences within the scope of the act."<sup>2</sup>

It may be expected that either party to a dispute will be quick to avail itself of the act if it does not feel strong enough to make certain the success of direct action. It may be repeated, too, that the act is most apt to be invoked in disputes in those industries where collective bargaining has become an established fact. A mutual agreement either to arbitrate or to negotiate implies that each party to the dispute has a respect for the strength of the other. But if either side feels itself in a more strategic position than the other, or if the issues involved are not those with which the public is generally sympathetic, the restrictive provisions will be of little value unless some attempt is made to impose the penalties provided for violation. Moreover, repeated violations of these provisions must inevitably reflect upon their enforceability and foster such a disregard for the act as to lessen its usefulness even as a conciliatory measure.

B. M. SQUIRES

UNITED STATES DEPARTMENT OF LABOR

<sup>1</sup> P. 782.

<sup>2</sup> *Labor Gazette*, Canadian Department of Labor, April, 1916, p. 1118.

## XLV

### EIGHT-HOUR SHIFTS BY FEDERAL LEGISLATION<sup>1</sup>

THERE is one thing that separates continuous industries from all other industries and gives them a distinct classification and a peculiar claim for legislation. In a continuous process there can be no gradual reduction in hours of labor. Employees must work either two shifts of twelve hours or three shifts of eight hours. There is no middle ground. It is impossible to reduce the hours gradually, say, from twelve to eleven, then to ten, then to eight, but they must be reduced abruptly from twelve to eight.

This sudden change in length of the day's work requires that these industries be treated in a class by themselves and not confused with other industries. Arguments which hold good for a gradual reduction of hours may have little or no place in an industrial process which can be improved only by an almost revolutionary reduction of hours.

First, for instance, there is the argument of increased efficiency of labor when working shorter hours. No amount of investigation whatever can give to this argument any greater weight than it has without investigation. We know by mere arithmetic that to reduce hours from twelve to eight means a reduction of  $33\frac{1}{3}$  per cent in hours, and that in order to produce as much in eight hours as in twelve efficiency must be increased 50 per cent.

Furthermore, since these industries often work their employees seven days a week, or a limit of eighty-four hours a week, we know that a reduction from eighty-four to forty-eight hours a week is a reduction of 43 per cent in hours and that for a man to produce as much in a week of forty-eight hours as in a week of eighty-four hours would require an increased efficiency of about 75 per cent. No amount of investigation can conclusively show in all continuous industries that a man's efficiency can be increased 50 to 75 per cent

<sup>1</sup>From *American Labor Legislation Review*, Vol. VII (1917), pp. 139-154.

by merely reducing his hours of labor 30 to 43 per cent. It may, perhaps, be shown in some industries; and there is reason to believe that in the manufacture of paper, which is now largely on the three-shift system, the men are turning out as much paper in eight hours as they formerly did in twelve hours. In this process the amount of output seems to turn upon the watchfulness and close attention which the machine tender is able to devote to the huge machine that pours out miles of paper when running correctly or balls up rubbish when it gets out of order. The machine might run smoothly for several hours and the man might sleep or doze, but experience seems to show that an eight-hour day without fatigue is about equal to a twelve-hour day half asleep the last four hours. This seems to be borne out by the fact that twelve-hour mills and eight-hour mills have been and still are competing with each other.

Yet even in this case the evidence is not conclusive, for the wages per day on some positions may have been reduced when the change was made and the low cost of labor to the employer on the eight-hour system may have been secured partly by the lower wages per day and partly by the larger output. In other industries, such as iron and steel, the work is already speeded up to the capacity of the equipment, and a reduction of hours from twelve to eight cannot be shown to increase the efficiency of the worker the necessary 50 per cent to offset the reduction.

We have, indeed, the report of a small company operating three open-hearth furnaces to the effect that the higher efficiency of the eight-hour system brought about a slight decrease in the cost of production. This was owing in part to greater economy of raw material used, such as pig iron and fuel oil, and partly to improved quality of the castings. But the lower cost of production was owing also to the fact that the hourly rate of pay was increased only about 20 per cent.<sup>1</sup> Had the hourly rate been increased 50 per cent, in order that the men might earn as much in eight hours as they had earned in twelve hours, the cost of production would have been increased some 25 per cent.

But there is another circumstance that tends to increase the cost of production if the eight-hour system is to be required by law.

<sup>1</sup>Commonwealth Steel Company, address of superintendent before Foundry-men's Association, 1912.

Manufacturers who oppose the reduction say that they cannot get enough workmen on the eight-hour basis, and that the workmen prefer to work twelve hours; therefore the twelve-hour competitors get all the workmen needed, while the eight-hour shops are short of men.

The evident answer to this objection is that workmen, of course, prefer twelve hours when they can make more money than they can in eight hours. The reason why manufacturers cannot get enough workmen on the eight-hour basis is that they do not pay as much wages for eight hours as their competitors pay for twelve hours. Of course, no matter how high the wages, there are always men who are willing to work overtime for more money.

One of the reasons given for overtime is that in a continuous process a man on one shift cannot leave his work until the man for the next shift shows up. This is evident, and the only way it can be met and overtime prevented is to have enough spare hands employed to jump in and fill the gaps when the regular men fail to come around.

An essential thing, therefore, in any eight-hour law is the prohibition of overtime. No exceptions whatever should be allowed except, perhaps, in case of accident, and these exceptions should be strictly limited under rules and regulations carefully laid down by a board created for the purpose. In no other way can it be provided that the manufacturer will employ enough spare hands to take care of emergencies.

But to have spare hands costs more money. They must be paid even when not working, or when working at less important jobs, in order to be on hand when needed.

Another reason for increased cost of the eight-hour system when imposed by law is in the matter of administration, getting evidence of violations and enforcing penalties for overtime. In order to make the law enforceable the eight-hour system cannot be limited merely to continuous processes, but must extend to all occupations in the same establishment. It would be almost impossible to get evidence of violations if a man on an eight-hour job could be transferred to other work when he finishes his eight-hour task. All jobs in the same establishment must be reduced to eight hours in order to enforce the eight-hour limit on the continuous jobs.

Consequently, there are at least three points where the eight-hour system, if enforced by law, will cost the employer more than the twelve-hour system. He must pay as much for eight hours as other employers are paying for twelve hours in order to get enough supply of labor. He must employ and pay spare hands in order to avoid overtime for regular hands. And the eight-hour system must include all employees in the shop in order to prevent evasion.

So much for the alleged increase in efficiency of labor to be expected from a reduction in hours. It must be conceded that efficiency will not be increased enough to offset the decrease in hours from twelve to eight.

Second, there is the argument for improved health of the worker when working shorter hours. This argument also is inconclusive in continuous industries. Under the decision of the United States Supreme Court the bakery business is not so unhealthful as to make a legislative ten-hour day constitutional,<sup>1</sup> although an eight-hour day by law is constitutional in smelting and underground mines.<sup>2</sup> It seems to be the theory of the Court, as it is also the theory of those who oppose the universal eight-hour day, that industries can be classified according to the probable injury which they inflict upon the worker, and that the hours of labor can correspondingly be adjusted so as to counteract this damage. It follows that in light and easy occupations the reasonable hours of labor might be ten, twelve, or even more per day, but in the heavy and exhausting occupations they might constitutionally be reduced to eight or even less per day.

But in the continuous industries this nice theory of compensation does not work. It might undoubtedly be shown that eight hours is all a man can stand when operating a Bessemer converter, but it can plausibly be shown that he can stand ten, twelve, or thirteen hours as a machine tender in a paper mill, or a heater in a steel mill, where he has very little manual work and merely has to wait and watch while the machine does the work. If the health argument alone is depended upon, the reduction of hours in continuous industries could be brought about under the decisions of the courts only in a few occupations where it can be shown that more than

<sup>1</sup> *Lockner v. New York*, 198 U. S. 45, 25 Sup. Ct. 539 (1905).

<sup>2</sup> *Holden v. Hardy*, 169 U. S. 366, 18 Sup. Ct. 383 (1898).

eight hours is excessive. But in many occupations in the same industry, from the standpoint of health alone, nine, ten, and even eleven hours cannot be shown to be excessive.

Consequently, when the question of constitutionality of an eight-hour law for continuous industries comes before the court, other arguments besides the health argument must be allowed a place, or the legislation will fall under the judicial veto.

These additional arguments may be summed up under the head of *citizenship*.

The peculiar fact about a continuous industry, compared with a noncontinuous, is its enormous increase in the production of wealth at an astounding decrease in cost. This is on account of the huge investment in fixed capital, so that the machine, more than the man, is the great producer. The man only watches, guides, and repairs the machine. The machine even feeds itself and unloads itself, and the man only touches buttons and handles levers. The fixed charges for interest and depreciation on these great investments might, in some cases, actually exceed the wages of the workers if the machines were operated only eight or ten hours a day. But operated continuously day and night seven days a week, these fixed charges go down in comparison with wages and output—in other words, the production of wealth is increased enormously in comparison with the cost of production.

To whom, then, shall this increased production go? Shall it go in part to the wage-earner in decreased hours without reduction in wages, or shall it go to the consumer in reduction in prices? The steel industry shows us where it goes. Before the Homestead strike of 1892 the hours of labor were nine, ten, eleven, or twelve, according to the time the man required to finish his task. Two shifts were all that could be used, and the equipment was idle as much as four to six hours or more out of the twenty-four, besides the expense of stopping and starting. The union of iron and steel workers foolishly opposed the eight-hour continuous system, against the protests of their own leaders, and consequently the union was smashed. After the loss of the strike and the expulsion of unionism the continuous system was introduced or extended. With it came not eight hours in three shifts but twelve hours in two shifts, wherever by any ingenuity the men could be forced to stand the physical strain of more

than eight hours. The story has been told by Fitch in his book on the steel workers. It is not merely the health of the employees that is affected, for the industry has imported or used the sturdy peasants and farm laborers of Europe. But it is the homes, the wife and children, the schools and libraries, the churches, the politics—in short, the citizenship, that has suffered.

We might, perhaps, all agree that a man could work comfortably and healthfully nine or ten hours in the steel industry, but that is not the question. The question is not Are ten hours excessive? but Are twelve hours excessive? If we agree that twelve hours are excessive, then we must agree that eight hours are the only reasonable hours in that industry. There is no other alternative. And we cannot agree that twelve hours are excessive in all processes if we base the argument solely on health. But we can all agree that twelve hours are excessive if the worker is to enjoy the privileges and observe the duties of home, family, and citizenship. Indeed, the citizenship argument cannot be separated from the health argument. The health argument would apply to animals and slaves as much as to men; the citizenship argument applies to workmen because they are present and prospective citizens of the republic.

The foregoing considerations make it evident that eight hours in continuous industries cannot be brought about by state legislation. Not only will the increased cost put any state at a disadvantage as against competing states but it cannot be shown that simply as a health measure a limit of eight hours is necessary for adult males. Only federal legislation will equalize competition and permit the argument for improved citizenship to have equal weight with that for improved health. Consequently it is proposed to apply the law<sup>1</sup> only to those industries engaged in interstate and foreign commerce and to enact the law through the federal Congress and not the state legislatures. The proposed law does not apply to local municipal utilities, like gas, water, or street cars, nor to railways and other national utilities. It applies only to industries that are subject to interstate and foreign competition.

In the hearings before the Massachusetts Commission of 1916 assigned to investigate this subject, certain paper manufacturers, while opposing state legislation, conceded that their objections would

<sup>1</sup>For tentative draft of proposed bill see page 821.



not hold against federal legislation. And this for two reasons: federal legislation would place them on an equality with competitors in other states, and the federal tariff could protect them against foreign competition.

Whatever may be said about interstate competition in those industries where a gradual reduction of hours is possible, or where the reduction is only from nine or ten hours to eight hours, it cannot be shown that any state can afford to take the lead in reducing hours abruptly from twelve to eight. Manufacturers in one state might work eight hours in competition with others working nine or ten hours, but they cannot generally compete with those working twelve hours. And, since there is no middle ground, it is only by federal legislation that continuous industries may be brought to the eight-hour basis.

On the other hand, it may now be accepted that the policy of a protective tariff is approved by both political parties to the extent, at least, of the difference in the labor cost of production in this and in competing foreign countries. Even the traditional free-trade party, when it recently came into power, restored the Tariff Commission, whose most important duty is this very problem of ascertaining how high the tariff duties should be placed in order to ward off foreign competition. It may be accepted, then, that for the future no tariff schedules will be reduced so low that an American industry on the eight-hour basis will not be able to compete, at least in the home market, with foreigners on a twelve-hour basis. There will undoubtedly be differences of opinion as to the exact rate of duty necessary for this protection. It cannot be expected that even the most expert tariff commission can figure out that rate exactly. It can only determine the upper and lower limits of the necessary protection—the upper limit of excessive protection, the lower limit that ceases to protect.

But with the policy of protection itself accepted, the matter of finding the exact rate for any particular industry is a detail that does not now concern us. The important thing is that the protective policy has now settled down where it genuinely accepts the argument which its advocates have insisted upon for the past eighty years—protection to American labor against cheap foreign labor. The weakness of this argument has always been that the federal

Congress has never undertaken to be consistent ; it has never undertaken to provide that the protected workman should actually get the protection. It has left that matter to be settled either by unions and strikes or by the good will of manufacturers.

How far these two methods have succeeded we can readily ascertain. In the steel industry the unions have been almost completely destroyed, and there is no indication in sight that laborers in that business will ever again be able to establish an organization that can deal with the manufacturers on equal terms. In the paper industry it was largely through the energy of the unions in the Eastern states that the eight-hour day was established in the face of the twelve-hour day in the Western states where the unions had been destroyed. But these very unions of paper workers are the most insistent of all advocates of eight-hour legislation to protect them in the gains they have already secured. Local unions of paper workers in Massachusetts sent their representatives to be heard by the state commission on the subject and strongly appealed for state legislation in opposition to the arguments of their employers. The unions there are confronted by the fact that about 10 per cent of the paper mills remain on the twelve-hour system ; and, further, they naturally infer, when their own employers, who have already accepted the eight-hour day, nevertheless oppose legislation requiring their twelve-hour competitors to come down to the same basis, that these employers intend to go back to twelve hours if they can do so at a good opportunity in the future. They are not willing to trust the good will of their employers.

That the good will of manufacturers cannot be depended upon to pass over to their employees the benefits of protection is also abundantly shown in the steel industry. In that industry the smaller competitors must follow the lead of the great corporation that sets the standards, or else be put out of business. Yet when, a few years ago, the United States Steel Corporation took a vote of its stockholders on the eight-hour day, after an exciting campaign conducted by a few of them inside the organization, the majority of the stockholders voted against it and the plan was dropped. Even on the much less expensive project of one day of rest in seven the same corporation has already abandoned its former humanitarian policy. No more impressive lesson of the futility of depending on the good will

of even the most prosperous of the tariff beneficiaries can be offered than the testimony of its competitor, the Lackawanna Steel Company, in its petition for exemption from the one-day-rest law of New York. In its petition, offered during the present year, the Lackawanna Company says (p. 31) :

We are advised that the chairman of the United States Steel Corporation several years ago, while labor conditions were entirely different from those obtaining at the present time, gave instructions quite peremptory in character to all the subsidiaries of that company requiring them to follow out the one-day-of-rest principle and warning them that any deviation from the published instructions would result in dismissal from office. We have, therefore, directed our investigations to these subsidiaries and state, without fear of successful contradiction, that the Corporation is now disregarding the one-day-of-rest-in-seven principle which it so strongly advocated several years ago and which it in the past, in good faith, earnestly strove to put into practice. It too has felt the shortage of men and owing to the great and pressing demand for its product no longer observes the practice which its chairman promulgated. Having taken so firm a position, it is not strange that it is difficult to get heads of subsidiaries to admit that the published rule has become a dead letter. When labor conditions become normal the Corporation will doubtless return to an observance of the rule. So far as we can ascertain, the rule was only observed by the Corporation during the years when the employees of this company had far more time off than the one-day-of-rest statute requires.

The Lackawanna Company then offers to produce affidavits supporting these statements.

Other instances might be given, but they are not now necessary. We are forced to conclude that in manufacturing industries with continuous processes neither unionism nor good will can secure the eight-hour day. Only federal legislation can overcome the valid objections of interstate competition and protection of the home market.

Another objection that has influence is the one that American manufacturers will be unable to sell their products in foreign markets in competition with foreigners. Granted that we can protect the home market, they say we cannot capture the foreign market. Two considerations must be taken into account in meeting this objection. In the first place, it is a question of public policy whether the American nation shall sacrifice its wage-earners in order to

enable its manufacturers to compete in foreign markets. This question of policy must be settled before we can consider any other objections to a reduction of hours from twelve to eight. We hold that if foreign markets cannot be captured unless laborers are forced to work twelve hours in continuous industries, then they are not worth capturing. Our 100,000,000 population furnishes the greatest home market in the world. If we are willing to tax ourselves in order to protect American labor in this bountiful home market, it is preposterous to ask us to give up this very protection, which is the main object of our tariff, just because we want to drive foreigners out of foreign markets.

Again, we very well know another penalty which we must pay if we push American manufactures too hard into foreign markets. The penalty is a huge navy and military preparedness in order to keep other manufacturing nations, like Germany and Japan, from driving us out of neutral markets like China and South America. We can protect our home market by a tariff; we can capture and hold the foreign market only by an army and navy. Furthermore, twelve-hour labor in these continuous industries will need a bigger navy and army than eight-hour labor, because it will enable our manufacturers more easily to undersell foreigners and so will more surely aggravate them into threatening us with their own armies and navies.

Again, from this very standpoint of military preparedness it needs no argument to show that laborers who work twelve hours continuously can never be equally fit for enlistment in time of war compared with those who work only eight hours. The twelve-hour system is suicidal, even for the purpose of capturing foreign markets. It stirs up foreign competitors to greater military preparation against us and, at the same time, breaks down the health and strength of the very working people who must be called upon to protect and defend that foreign market.

But it does not follow that foreign countries will always adhere to the twelve-hour system. Even before the war Great Britain's iron and steel industry had about completed the change to an eight-hour system. The International Association for Labor Legislation, in 1912, initiated the movement for treaties on this subject among competing nations. This movement was interrupted by the war, but

that it is already bearing fruit is indicated by press dispatches from Sweden (December 2, 1916) stating that Sweden, Norway, Denmark, and Russia have joined together in the investigation of the wood-pulp industry preparatory to adopting the three-shift system. The action of the American section, in bringing forward at this time a bill for federal legislation, is in line with this movement initiated in 1912 by the International Association. But the United States government does not enter into treaties of this kind, and our protective-tariff system and enormous home market make it unnecessary to wait and see what other countries will do after the war.

Another reason why manufacturers oppose this legislation is their dread that the introduction of the eight-hour system by law in the continuous processes will be an entering wedge for introducing it in other processes and industries.

Of course, federal legislation for eight hours in continuous processes may possibly suggest similar laws for noncontinuous processes. Nobody can promise that the agitation will stop at the continuous process. But noncontinuous industries stand on a different footing. In them the hours can be gradually reduced and federal legislation is not required. If, however, the fear of other laws not now needed is allowed to prevent the enactment of a law urgently needed, then, of course, all progressive legislation on any subject can be prevented. The fear of further legislation has always stood in the way of needed legislation. It is only by going ahead in spite of this fear that any progress can be made and any particular law can be discussed on its merits.

It may be that it is this dread of further legislation that prevents employers who privately favor this law from publicly supporting it. But there seems to be another reason. In the Massachusetts hearings even the paper manufacturers who already have the eight-hour day in competition with others on the twelve-hour day nevertheless, with one exception, opposed state legislation requiring their competitors to adopt it. Their objection is incomprehensible from the standpoint of self-interest. It can be explained only from the standpoint of class interest. They oppose a law which would benefit themselves individually because they stand by other employers who would not be benefited by it. If this class interest of employers is so great as to outweigh self-interest, surely such employers cannot raise the

objection to this law that it is class legislation. If they suppress their private opinions in the interest of their class opinions, they have already disqualified themselves from objecting to legislation that treats them as a class.

The bill, in tentative form, is limited to the iron and steel and the paper industries. It is in these two industries that governmental investigations have already been made<sup>1</sup> which warrant legislation at this time. But the administrative board created by the bill is directed to investigate other continuous industries of interstate commerce and to recommend to Congress the extension of the act wherever it is practicable and desirable to establish the three-shift system.

The enforcement of the law follows the model set by the child-labor law of 1916.<sup>2</sup> The Attorney General, the Secretary of Commerce, and the Secretary of Labor constitute a board with power to make rules and regulations. The Secretary of Labor and the federal district attorneys inspect and prosecute. The law comes under the power of Congress to regulate interstate commerce.

In order that manufacturers may have time to work out their own methods of obeying the law, the date of taking effect is set ahead three years, but the board is authorized to promulgate rules at an earlier date. In this way it is possible for employers to take advantage of any falling off in business and to introduce the three-shift system at a time when it will offset unemployment.

I shall not stop to discuss at length the constitutional question. The decisions of the courts are familiar. Some decisions support this proposed legislation, others run counter to it. It seems to violate some of the abstract principles of individual liberty. It takes away from the employer certain property rights and transfers them to his employees; it compels him to employ more laborers than he would if he ran his business in his own way; it takes away the liberty of the worker by prohibiting him from earning more money by working overtime; and, worst of all, this worker, who is being paid more money for less liberty, is a grown-up man—not a child nor a woman.

It may be admitted that these constitutional objections would have weight if the thing were left to state legislation. A state

<sup>1</sup>By the Tariff Board and the Bureau of Labor Statistics.

<sup>2</sup>Overthrown by the Supreme Court but reenacted under the taxing power of United States statutes.

upreme court is confronted by the fact that the state legislature cannot protect employers by means of a tariff. Although, technically a law, this may not make a difference provided it can be shown that public interest is subserved, yet practically an increase of 25 per cent to 50 per cent in labor cost would lead the court suspiciously to scrutinize whether the public interest really requires so great a sacrifice on the part of employers. It is different in federal legislation, where a protective tariff offsets the sacrifice. The tariff already interferes with liberty, and manufacturers, who profit by this interference, cannot with good grace object to further federal interference.

The case is somewhat different with the objections raised by prominent leaders of organized labor. They oppose legislation regulating hours of labor of adult male workers not because it deprives the individual of his empty liberty to work overtime but because it is a substitute for that collective liberty which the unions have acquired through the Clayton Act. They rightly fear the doing by legislation what the law permits them to do by strikes and boycotts, because they fear anything that invites the courts to take part in the struggle of organized capital and organized labor. Their experience, likewise, has shown them too often that labor laws are a dead letter, and that even with a law on the statute book it sometimes requires a strike or the threat of a strike to get it enforced according to its intent. Naturally, to them their trade union is more important than a law which takes its place.

These objections should be seriously considered, but it is submitted that a federal eight-hour law for continuous industries stands on a different footing from state legislation for noncontinuous industries. One of the reasons why state laws are not strictly enforced is this very fact of the necessity of meeting interstate competition. But a federal law, applied equally everywhere, furnishes much less inducement to violation than a state law which forces on the employer the option of either violating it or giving up his business to competitors in other states.

Furthermore, in the steel industry, for example, with its vigorous antiunion policy, it is difficult to see how a union can ever secure such footing that it can compel this powerful corporation to come down abruptly from twelve hours to eight hours. The same is true of other continuous industries, such as sugar refining, where the bulk of the business is controlled by a trust. On the other hand, in the paper

industry it is the fairly well-organized unions of Massachusetts which are the most insistent advocates of eight-hour legislation and which have sent their leaders and members to press the matter before the state legislative committee.

In general, it is quite evident that the trade-union opposition to eight-hour legislation does not extend to all unions nor to all of the rank and file, and this opposition is likely to disappear when unions seriously attempt the stupendous task of reducing hours from twelve to eight in the continuous industries.

In fact the field of unionism is not materially lessened by the proposed law, and on this point it doubtless will be considered by some persons a fatal defect that the bill does not propose to prohibit a reduction in wages when it requires a reduction in hours. The reasons underlying this limitation are partly economic, partly administrative, and partly political. From the economic standpoint experience has shown that if overtime is prohibited both the increased demand for labor and the standard of life of the laborers may be expected to bring the wages for eight hours up to the former level of twelve hours. However, this can scarcely occur at once, and it is more likely to occur if a labor union must be taken into account by the employer.

From the administrative standpoint it is not proposed to regulate wages by law on account of the difficulty of getting evidence of violations. The wide differences in wages of individuals and classes and the fact that the individual worker would be required to testify against his employer make the enforcement of a wage law the most difficult of all labor laws. But the eight-hour day, if uniform for all labor in the same establishment, can, by the device of requiring the names and hours of each employee to be posted, be made to furnish to the factory inspector its own evidence of violation.

From the political standpoint the regulation of wages for all classes of labor must eventually lead to compulsory arbitration and its prohibition of strikes—a strain on our political institutions which we are not prepared to meet. But regulation of hours of labor in continuous industries does not introduce a new and radical policy; it is only the extension of a policy already recognized and successfully enforced through state and federal legislation.

JOHN R. COMMONS

UNIVERSITY OF WISCONSIN



TENTATIVE DRAFT OF A BILL<sup>1</sup>

To regulate interstate and foreign commerce in products of continuous industries.

SECT. 1. That no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any article or commodity the product of any mill or manufacturing establishment situated in the United States and engaged in

- (a) the production of pig or molten iron, or steel ingots by whatever process made,
- (b) the rolling of steel or iron by any hot process,
- (c) the refining of iron by any hot process, or
- (d) the production of mechanical wood pulp, sulphite or sulphate pulp, newsprint, book or other paper, cardboard or other manufactures of pulp,

in which within thirty days prior to the time of the removal of such product therefrom any person engaged in mechanical or manual labor has been employed or permitted to work more than eight hours in any day or more than six days in any week.

SECT. 2. That the manager, superintendent, or foreman of any such mill or manufacturing establishment shall when and as required by the board post in the mill or manufacturing establishment a notice on a printed form furnished by the board, stating the name of every person employed therein and for every such person the hours of work required on each day of the week, the hours of beginning and quitting work, and the period allowed for meals. The presence of any such person in the mill or manufacturing establishment at a time not included in the hours of work of such person as stated in such notice shall constitute *prima facie* evidence that such person was then employed or permitted to work contrary to the standards prescribed by Section 1 of this act.

SECT. 3. That the Attorney General, the Secretary of Commerce, and the Secretary of Labor shall constitute a board, herein referred to as the board, to make and publish from time to time uniform rules and regulations for carrying out the provisions of this act. The Secretary of Labor shall investigate and report to the board the conduct and operation of mines, quarries, mills, and manufacturing establishments situated in the United States which are operated both day and night on at least thirty calendar days in the year, and shall ascertain when it is practicable and desirable to establish the three-shift system for carrying on work in such mines, quarries, mills, or manufacturing establishments. The board shall make an annual

<sup>1</sup> In view of the decision on the child-labor law this bill should probably be drawn under the taxing power.

report to Congress of its findings and its recommendations with respect to the extension of this act to the products of industries other than those specified in Section 1.

SECT. 4. That for the purpose of securing proper enforcement of this act the Secretary of Labor, or any person duly authorized by him, shall have authority to enter and inspect at any time mills and manufacturing establishments and other places in which goods are produced or held for interstate or foreign commerce; and the Secretary of Labor shall have authority to employ such assistance for the purposes of this act as may from time to time be authorized by appropriation or other law.

SECT. 5. That it shall be the duty of each district attorney to whom the Secretary of Labor reports any violation of this act, or to whom any state factory inspector or commissioner of labor, state medical inspector, or any other person presents satisfactory evidence of any such violation, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay for the enforcement of the penalties in such cases herein provided.

SECT. 6. That any person who violates any of the provisions of Sections 1 or 2 of this act, or who refuses or obstructs entry or inspection authorized by Section 4 of this act, shall for each offense prior to the first conviction of such person under the provisions of this act be punished by a fine of not more than \$200, and shall for each offense subsequent to such conviction be punished by a fine of not more than \$1000 nor less than \$100, or by imprisonment for not more than three months, or by both such fine and imprisonment, in the discretion of the court: *Provided*, That no dealer shall be prosecuted under the provisions of this act who establishes a guaranty issued by the producer or manufacturer, resident in the United States, to the effect that the goods shipped, delivered for shipment, or transported, were produced or manufactured in a mill or manufacturing establishment specified in Section 1 in which within thirty days prior to the removal of such goods therefrom no person engaged in mechanical or manual labor was employed or permitted to work more than eight hours in any day or more than six days in any week; and in such event, if the guaranty contains any false statement of a material fact the guarantor shall be amenable to prosecution and to the fine or imprisonment provided herein for violation of the provisions of Section 1 of this act.

SECT. 7. That the word "person" as used in this act shall be construed to include any individual or corporation or the members of any partnership or other unincorporated association. The term "ship or deliver for shipment in interstate or foreign commerce" as used in this act means to transport or to ship or deliver for shipment

from any state or territory or the District of Columbia to or through any other state or territory or the District of Columbia or to any foreign country ; and in the case of a dealer means only to transport or to ship or deliver for shipment from the state, territory, or District of manufacture or production. The term "three-shift system for carrying on work" means that three shifts or relays of workers are used, whether the shifts or relays are changed at intervals of eight hours or less.

SECT. 8. That this act shall take effect January 1, 1920, except as to Section 3, which shall take effect January 1, 1919.



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